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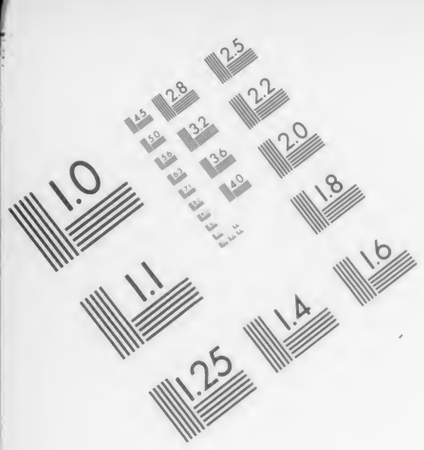

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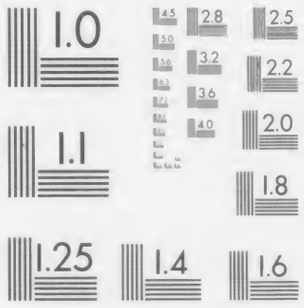

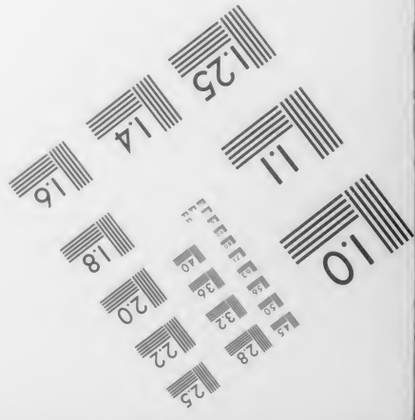

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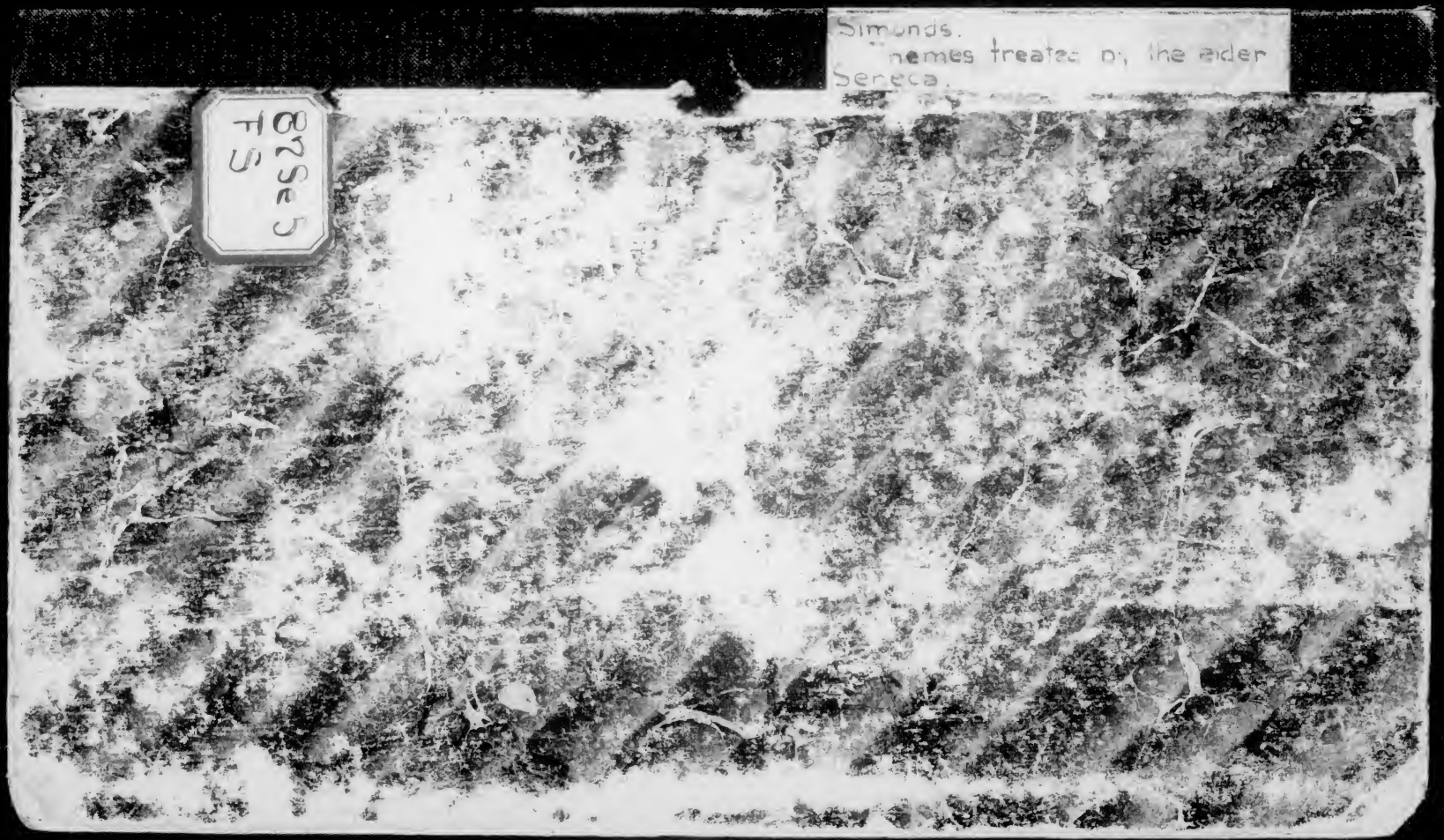
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The Themes Treated by the Elder Seneca

DISSERTATION

PRESENTED FOR THE DEGREE OF PH. D., JOHNS HOPKINS UNIVERSITY
JUNE, 1896

BY

THOMAS STANLEY SIMONDS

The Lord Baltimore Press
THE FRIEDENWALD CO.
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PREFACE.

The writings of Seneca the Elder, as well as the declamations preserved under the names of Quintilian and Calpurnius Flaccus, introduce us to a peculiar and characteristic phase of mental and literary activity. This activity has neither the charm of youth nor the repose of maturity, but is rather that of degeneration and decay. Antique mental life is presented in these writings as it verged on its second childhood, and it will not be without interest to sketch briefly on the basis of Seneca's writings this phase of classical literature, to state its causes and, as far as may be, to trace to their sources the examples of it which remain.

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PART I.

I.—Rhetoric in general.

1. *Evolution of the late rhetoric.*

Of all the species of Roman literature none traces its origin to Greece more directly than rhetoric, and it will not therefore be without advantage to consider briefly rhetoric as distinguished from the old oratory among the Greeks.

It was Isocrates who gave to Greek eloquence its finish and polish and, what is perhaps of greater importance, infused into it an ethical element.[1] It attained its height in Demosthenes. Aristotle in his *Rhetoric* gave it a scientific basis. But very early there manifested itself in oratory a tendency to go astray, which provoked the censure of Isocrates,[2] and the sharp attacks of Plato.[3] Its decline was steady. After the downfall of Athenian freedom scarcely one great orator can be mentioned. Signs of decay or at least of a lack of productiveness are already shown in Dinarchus, who was an imitator.[4] The style also became lax and weak.[5] In subjugated Athens there was no longer a field for oratory, which accordingly emigrated to the free and flourishing cities of Asia-Minor. There it exhibited great activity but in a dreadfully artificial and distorted manner. We refer to the so-called Asian style.

[1] Cf. Blass, *Die griechische Beredsamkeit*, p. 78 sq.; *Geschichte der attischen Beredsamkeit* ii, p. 41; Spengel, *Ueber das Studium der Rhetorik bei den Alten*, p. 8.

[2] Cf. 10 (Hel.) 1 sq.; 11 (Busir.) 9. 49.

[3] Cf. Phaedr. 267 A sq.

[4] Cf. Dionysius Halicarnassus, *De Dinarcho judicium* c. 5: "... οὐ μὴν ἀλλὰ καὶ τοῦ Δημοσθενικοῦ χαρακτῆρος, ὃν μάλιστα ἐμιμήσατο;" Blass, *Die griech. Bereds.*, p. 15; Susemihl, *Geschichte der griechischen Litteratur* in der Alexandrinerzeit, 1892, ii, p. 461.

[5] Cf. Cicero, *De oratore* ii, 23, 95: posteaquam extinctis his omnis eorum memoria sensim obscurata est et evanuit, alia quaedam dicendi molliora ac remissiora genera viguerunt.

a. *The Asian schools.*—Hegesias of Magnesia at Mount Sipylos, who lived about 250 B. C.,[6] is regarded as the founder or at any rate the foremost representative of the Asian school.[7] Hegesias's diction was marked by a striving after metaphors and figures, an indulgence in surprising puns and puerile witticisms, and by a lack of dignity and sincere feeling. In his attempt to imitate the simple periodic structure of Lysias, he minced everything into short sentences to which he added the frequent use of hyperbaton.[8] It may be said in general that the Asian style is distinguished from the old Attic by its affectation, turgidity of verbal ornament, and inanity of thought.[9]

b. *Causes of the decline of Greek oratory.*—What Seneca says in reference to Roman eloquence is applicable to the Grecian also and to human achievement in general: "fato quodam cuius maligna perpetuaque in rebus omnibus lex est, ut ad summum perducta rursus ad infimum velocius quidem quam ascenderant,

[6] Cf. Blass, *Die griech. Bereds.*, p. 25; Susemihl, *Gesch. der griech. Litterat.* ii, pp. 463 sq.

[7] Cf. Strabo xiv, 648: "ἀνδρες δ' ἐγένοντο γνώριμοι Μάγνητες Ἡγησίας τε ὁ ῥήτωρ, ὃς ἤρξε μάλιστα τοῦ Ἀσιανοῦ λεγομένου ζήλου διαφθείρας τὸ καθεστὸς ἔθος τὸ Ἀττικόν . . ."; Blass, *Die griech. Bereds.*, pp. 5. 16, following Dion. Hal., *De antiq. orat. pro.* 1, dates the Asian school not from Hegesias, but from the death of Alexander the Great and makes it begin with Demetrius Phalereus, who died about 283 B. C. Cicero, *Brutus* ix, 38, says of Phalereus: "Hic primus inflexit orationem et eam mollem teneramque reddidit et suavis," while Quintilian, *Instit. orat.* x, 1, 80, considers him as having had "multum ingenii et facundiae."

[8] Cf. Cicero, *Orator* lxvii, 226: ". . . dum ille quoque imitari Lysiam vult . . . saltat incidens particulas. Et is quidem non minus sententiis peccat quam verbis, ut non quaeret quem appellet ineptum, qui illum cognoverit"; *ibid.* lxix, 230: "Sunt etiam qui illo vitio, quod ab Hegesia fluxit infringendis concidendisque numeris in quoddam genus abiectum incidant versiculorum simillimum"; Dion. Hal., *De compositione verborum* c. xviii, who quotes from the History of Hegesias to illustrate his style; cf. also Blass, *Die griech. Beredsamkeit*, pp. 31 sq. and Susemihl, *Geschichte der griech. Litt.*, p. 467.

[9] For a more detailed description of the Asian style compare Cicero, *Brutus* xcv, who distinguishes two divisions of it, the sententious and the verbose, and mentions their principal representatives, cf. also *ibid.* xiii, 51. For the relation of the Asian school to the second Sophistic, which received a new impetus in the second century and kept itself alive until the end of the old Greek civilization in the sixth century, compare Rohde, *Der griechische Roman*, pp. 290 sq. and in *Rheinisches Museum* xli (1886), p. 170–190.

relabantur."[10] In the art of oratory there seems to be an inherent tendency to deviate from simplicity and truth, and to run riot. As particular causes of its decay in Greece, its proper home, may be mentioned the general decadence of the Greek nation; true oratory can flourish only among a free, patriotic, high-minded people, not under a "fierce democracy which has sunk into the lifelessness of a cheerless and dishonored old age."[11] Then, too, there was the change of the seat of artistic speech from Attica to Asia, exuberant and exaggerating in all things. To this must be added the absence of any lively political interest; as liberty declined, deliberative discourse was deprived of its real object, and the corruptness of the courts left little room for true forensic oratory. All orations became more or less show-speeches, and the speaker could indulge only in rhetorical commonplaces; having no attainable object before him, he was led to employ all his efforts on form and to exhibit his art in ostentation and bombast. Moreover, there had come into being a subtle and minute development of rhetorical technique which of necessity hindered, if it did not wholly stifle, spontaneous heartborn eloquence. It will be seen that causes precisely similar brought about the decline of Roman oratory also.

2. *Political and social conditions favoring the evolution of rhetoric at Rome.*

a. *Oratory among the Romans.*—Next to Greece no country afforded a grander field for the growth and display of oratorical genius than Rome. If the Roman character lacked the elegance and grace of the Greek, especially the Athenian, this was counterbalanced by a dignity and gravity of speech which was supported by the senatorial system and which was never reached at Athens. "The Roman mind, unlike the Greek, did not instinctively conceive the public speaker as an artist. It conceived him strictly as a citizen, weighty by piety and years of office, who has something to say for the good of other citizens, and whose dignity, hardly less than the value of his hearers' time, enjoins a pregnant and severe conciseness."[12] The practical sturdy Roman of the earlier

[10] *Praefatio Controvers.* i, 7.

[11] Freeman, *History of Federal Government* i, p. 221; cf. Seneca, *Praef. Controv.* i, 8 sq.

[12] Jebb, *The Attic Orators* ii, p. 446.

period took no interest in theories and technical treatises on oratory. Even the writing down of speeches after delivery was rarely if ever resorted to.[13] The theory and technique of eloquence do not begin to receive attention among the Romans before the middle of the second century B. C. in consequence of the great oratorical activity of that period, all the works of which seem to be rhetorically colored. This development took place under the influence of Greece. Rhetoric was, as it were, the inheritance of the Greek nation, and when her own independence was at an end, it was to Rome that her children carried their talents.[14] Many Romans received lessons from Greek rhetoricians, and at first the Greek language was predominantly employed in rhetorical exercises.[15] There was at first a strong opposition at Rome to Greek rhetoric and rhetoricians, led by Cato and those like-minded to him;[16] but after the Gracchi, who were more Hellenic in their tastes, Greek rhetorical art began to exercise a considerable influence on Roman oratory, and before 100 B. C. florid Asianism had its admirers at Rome.[17] It was in fact in its Asian form that Greek rhetoric became the teacher of the Romans,[18] but it was not until about 90 B. C. that L. Plotius Gallus and others established a school and taught the principles of rhetoric in Latin.[19] According to Blass,[20] L. Crassus (140–91 B. C.) and M. Antonius (143–87 B. C.) were the first Roman orators who were influenced by Hellenism. M. Antonius was also the first after Cato to write a rhetorical treatise in Latin.[21] The most important work on the subject is the treatise *Ad Herennium*, ascribed to Cornificius and probably written some years previous to 80 B. C. It is of the same character as the Greek manual of Anaximenes,[22] only brought up to date and adapted to the more practical requirements of Roman oratory.[23] Latin rhetoric indeed always remained essentially a Greek form of mental discipline, and as such became eventually a great and lasting force for the ruin of Latin literature.[24] We witness at Rome a repetition of the process which took place in Greece. The different styles or rather manners of oratory arose in succession at Rome; the pure Asian is represented by Quintus Hortensius; the Atticizing or eclectic style, which was developed in the Rhodian school, by M. Tullius Cicero,[25] and the pure Attic style, upheld among the Greeks by Dionysius Halicarnassus, by C. Licinius Calvus.[26] The victory of the old Attic oratory over Asianism at Rome and in Greece, and the other provinces as well, dates from about 60 B. C., but even from the middle of the second century a reaction had set in against this unwholesome and unnatural outgrowth. A struggle against it arose in Pergamum especially.[27] Hermagoras of Temnos also and his school about the middle of the second century B. C., subtle and scholastic as his system was, "did good service by reviving the conception of oratory not as a knack but as an art, and so preparing men once

[13] Cf. Seneca, *Praef. Contr.* i, 9: "ille enim vir (sc. Cato) quid ait? orator est . . . *vir bonus dicendi peritus.*"

[14] Cf. Blass, *Die griechische Beredsamkeit*, pp. 104 f., 115; Marx, *Chauvinismus und Schulreform*, p. 13.

[15] Cf. Cicero, *Brutus* lxxxix, 310: "Commentabar declamitans . . . ; idque faciebam multum etiam Latine, sed Graece saepius, vel quod Graeca oratio plura ornamenta suppeditans consuetudinem similiter Latine dicendi adferebat, vel quod a Graecis summis doctoribus, nisi Graece dicerem neque corrigi possem neque doceri"; Suetonius, *De clar. rhet.*: "Cicero ad praeturam usque Graece declamavit, Latine vero senior quoque. . . ."

[16] Cf. Blass, *Die griech. Bereds.*, pp. 105 . 115; Mommsen, *Römische Geschichte* ii, p. 246; Marx, *op. cit.*, p. 12.

[17] Cf. Blass, *ibid.*; Jebb, *The Attic Orators* ii, pp. 446 sq.

[18] Cf. Rohde, *Der griechische Roman*, p. 288.

[19] Cf. Quintilian, *Instit. Orat.* ii, 4, 42: "Latinos vero dicendi praeceptores extremis L. Crassi temporibus coepisse Cicero auctor est; quorum insignis maxime Plotius fuit"; Seneca, *Praef. Controv.* ii, 5; Suetonius, *De clar. rhet.* 2; Cicero, *De orat.* iii, 24, 93, cf. also Marx, *Chauvinismus und Schulreform*, p. 15; Cucheval, *Hist. de l'éloq. rom.* i, p. 224.

[20] *Die griech. Bereds.*, p. 120.

[21] Cf. Quintilian, *Inst. Orat.* iii, 1, 19; Cicero, *Brutus* xliv, 163; *De orat.* 1, 21, 94; 48, 208.

[22] It is also called *Rhetor. ad Alexandrum* and was ascribed to Aristotle, but it is now generally agreed that it is a work of Anaximenes of Lampsacus; Susemihl alone disputes this, and thinks it originated as a connecting link between the Isocratean and Hermagorean methods at the beginning or in the middle of the third century B. C.

[23] Cf. Spengel, *Ueber das Studium der Rhetorik*, p. 102, and in *Rheinisch. Museum*, xviii (1863), p. 487.

[24] Cf. Marx, *Chauvinismus u. Schulref.*, pp. 17 . 18.

[25] Cf. Dion. Hal., *De Din. jud.* c. 8; Cicero, *Orator* viii, 25; *Brutus* xiii, 51: "Rhodii saniores et Atticorum similiores"; Quint., *Inst. Orat.* xii, 10, 18: "Genus Rhodium quod velut medium esse"; comp. also Rohde, *Der griech. Roman*, p. 289; Susemihl, *Gesch. der griech. Litt.* ii, p. 489; Westermann, *Geschichte der Beredsamkeit* 1, p. 176 § 81, and Blass, *Die griech. Beredsamkeit*, p. 4 . 89, who, however, thinks that the school of Rhodes did not deserve the credit accorded to it.

[26] For a characterization of him comp. Seneca, *Controv.* vii, 4, 6 sq.

[27] Cf. Susemihl, *Gesch. der griech. Litt.* ii, p. 482 sq.

more to discern the true artists and the false."[28] But the decisive battle against Asianism was fought and won at Rome especially through the agency of Apollodorus of Pergamum, 100–18 B. C., the teacher of Augustus.[29] The principal cause for the defeat of Asianism is probably the fact that its pompous and inane jingling could not satisfy the great and practical needs of Roman public life, and therefore the sturdy Roman orators abandoned their living Asianic teachers for the immortal masters of the old Attic eloquence.[30]

b. *Decay of oratory at Rome.*—The victory of old Attic oratory over Asian rhetoric at Rome was of short duration. "Quidquid Romana facundia habet, quod insolenti Graciae aut opponat aut praeferat, circa Ciceronem effloruit; omnia ingenia, quae lucem studiis nostris attulerunt tunc nata sunt. In deterius deinde cotidie data res est," complains Seneca.[31] As has been stated already, the causes of the speedy decadence of oratory at Rome are about the same as those which brought about its decline in Greece. "Sive luxu temporum," continues Seneca,—"nihil enim tam mortiferum ingeniis quam luxuria est,—sive cum pretium pulcherrimae rei cecidisset, translatum est omne certamen ad turpia multo honore quaestuque vigentia. . . ." The turning-point for the worse should be placed in the Augustan period with the overthrow of republican institutions, as in Athens the downfall of liberty drew in its train that of oratory also, for true eloquence is the child of liberty as on the other hand it nourishes and supports it. There no longer existed any material to kindle the fires of eloquence.[32] Order and peace and quiet,—even if the quiet of a cemetery,—now prevailed at Rome in place of the former

[28] Jebb, *The Attic Orators* ii, p. 445; on Hermagoras's system compare Thiele, *Hermagoras*, pp. 143 sq.

[29] Cf. Susemihl, *Geschich. der gr. Litt.* ii, pp. 473–502 sq.; Blass, *Die gr. Bereds.*, pp. 3–149–160.

[30] Cf. Rohde, *Der griech. Roman*, p. 289.

[31] *Praefatio Controv.* i, 6 sq.

[32] Cf. *Dialogus de oratoribus* (ascribed to Tacitus) c. 36: "Magna eloquentia sicut flamma materia alitur et motibus excitatur et urendo clarescit . . ."; c. 41: "Quid enim (sc. at the present day as compared with the former time of the republic) opus est longis in senatu sententiis, cum optimi cito consentiant? quid multis apud contionibus cum de republica non imperiti at multi deliberent, sed sapientissimus et unus . . . ?" cc. 36–41 are all extremely interesting on this point.

fierce rivalries and contentions of parties and party leaders. And soon despotism on the one hand and its counterpart servility on the other, attained such proportions as to stifle all noble and high-spirited thought and action. Seneca complains bitterly over the literary *auto-da-fés* which came into use in his time for the discipline of refractory minds.[33] In addition to this the prosperity and wealth which came to the Roman empire under Augustus contributed their part toward obliterating all remnants of the old Roman simplicity and engendering a taste for superficial splendor and a striving after display.[34] A lively scientific and literary activity did indeed spring up;[35] circles were formed for the promotion of culture and literary taste; we need only recall Maecenas. This age in the mental history of Rome may be not inaptly likened to that of Louis the Fourteenth of France. But what this literary activity gained in breadth it lost in depth and earnestness of purpose; it aimed merely at the brilliant, the piquant, and the interesting; it was marked by flippancy and entire subordination of matter to form. This change in the spirit of Roman literature exhibited itself in the evolution of that diction which is designated as "Silver Latin." The vocabulary became changed; new words and phrases were invented and many of those hitherto in use were lost or rejected; the syntax was simplified, numerous short sentences replacing a less number of long ones; the use of abstract substantives became frequent; in the periodic structure parataxis took the place of hypotaxis; natural expressions gave way to rhetorical figures; the lines separating prose and poetry became obliterated; objectivity was replaced by subjectivity and arbitrariness; sublimity and depth of diction were supplanted by an artificial elegance. Of all this the rhetors represented in the works of the elder Seneca are the type, and Quintilian in vain opposed it.[36] This great change in the tendency and aims of Roman literature manifested itself in the most marked degree in the art

[33] *Praef. Contr.* x, 5 sq.: "Effectum est enim per inimicos ut omnes eius (sc. T. Labieni) libri comburerentur; res nova et inusitata supplicium de studiis sumi"; cf. also §7.

[34] Cf. Hainmer, *Beiträge zu den 19 grossen quintilianischen Declamationen*, p. 3.

[35] Cf. Bernhardy, *Grundriss der römischen Litteratur*, p. 75. Literary facts as well as explicit testimonies show that no preceding age possessed more susceptibility to fine, sometimes superfine, form or a more cultivated taste.

[36] Cf. Koerber, *Ueber den Rhetor Seneca*, pp. 24 sq.

of eloquence. Naturally so, for this department of mental activity can thrive and reach its normal development only in a state of political freedom, and this no longer existed. On the other hand speech-making and speech-hearing were deeply rooted in the Roman nature. Hence, when the forum became dull, speech-making retired to the schoolroom to continue there a shadowy life. Rhetoric supplanted oratory, rhetoricians took the place of orators, and speaking was superseded by declaiming.[37] Yet another reason for the development of these schools of rhetoric may be found in the fact that already in Cicero's time and still more afterwards, jurisprudence attained at Rome an importance before unheard of. It assumed an independent position and treated rhetoric as it had been treated by it—with disregard. The orator when in court found himself under the control of the judge, by whom he was compelled to fully realize his subordinate position and to confine his discourse closely to his subject.[38] Rhetoric, thus driven from political life and repressed in the courts, came to be treated as an art or science independent of all others, an end in itself, its value consisting in the formal training it gave the mind.

[37] Even in the time of the elder Seneca, when the rhetoricians and the rhetorical schools were in the height of their prosperity, the language still distinguished between *dicere* and *declamare*, as also between *orator* and *rhetor* or *declamator*. Compare Sen., *Praef. Controv.* i, 12: "Ipsa declamatio apud nullum antiquum auctorem ante Ciceronem et Calvum inveniri potest, qui declamationem a dictione distinguit; ait enim declamare iam se non mediocriter, dicere bene; alterum putat domesticae exercitationis esse, alterum verae dictionis . . ."; Contr. vii, 1, 20: "De colore inter maximos et oratores et declamatores disputatum est. . . Pasianus et Albucius et praeter oratores magna novorum rhetorum manus . . ."; Suas. vi, 11: "Itaque Cassius Severus aiebat alios declamasse, Varium Geminum vivum consilium dedisse."

[38] Cf. Spengel, *Ueber das Studium*, etc., p. 25. Tacitus, *Dialogus* c. 19: "Qui (sc. indices) vi et potestate, non iure aut legibus cognoscunt, nec accipiunt tempora, sed constituunt, nec expectandum habent oratorem dum illi libeat de ipso negotio dicere, sed saepe ultro admovent atque alio transgredientem revocant at festinare se testantur"; Quintilian, *Instit. Orat.* iv, 1, 72 ". . . si sit praeparatus satis etiam sine hoc index"; iv, 5, 10: "Festinat enim index ad id, quod potentissimum est."

II.—The Roman Rhetoricians.

1. *Their position in the new fabric of the state.*

It has been already stated[39] that L. Plotius Gallus was the first to open a school for Latin rhetoric about 90 B. C. This does not of course imply that there had never previously been instruction and exercise at Rome in the art of speech-making. Thus Lucius Praeconius of Lanuvium, surnamed Stilo, although not a professional teacher, had gathered about him ten years before a select circle of young men for the purpose of reading old authors and probably also to give them some training in the theory and practice of speech-making.[40] But before Blandus no native Roman of position had been a professional teacher of rhetoric, the profession indeed being looked upon as disgraceful and hence practiced only by *libertini*.[41] Plotius found many imitators and followers. In vain had the censors as early as 92 B. C. issued an edict against these schools.[42] They remained henceforth a permanent institution of the Roman Empire. In the imperial epoch rhetorical schools sprang up everywhere.[43] It was for the interest of the rulers to favor their establishment and development, inasmuch as they diverted the public mind from the great constitutional changes which had taken place and caused the loss of public discussion to be felt less keenly. The public too favored these schools because in them dying liberty lingered longer than in the forum and the senate, which were under the immediate control of the government.[44] These schools, moreover, met the demand of the times for a general and broad culture. As it had been formerly claimed by Isocrates that oratory should be regarded as uniting in itself all the element of culture[45] and that even the name

[39] See above, p. 10.

[40] Cf. Mommsen, *Römische Geschichte* ii, p. 425.

[41] Cf. Seneca, *Praef. Contr.* ii, 5: "Qui (sc. Blandus) primus eques Romanus Romae docuit; ante illum inter libertinos praeceptores pulcherrimae disciplinae continebantur et minime probabili more turpe erat docere quod honestum erat discere."

[42] Cf. Cicero, *De oratore* iii, 24, 93; Gellius, *Noctes Att.* xv, 11; Tacitus *Dial.* c. 35; Suetonius, *De clar. rhet.* c. 1; Cucheval, *Hist. de l' éloq. rom* i, pp. 224 sq.

[43] Cf. Hulsebos, *De educ. et inst. apud Rom.*, p. 109.

[44] Cf. Morawski, *De rhet. lat.*, p. 16.

[45] Νικοκλ. (2) 5 sq. 39; Πανηγ. (4) 47–49.

of philosophy should be bestowed upon it,[46] so now a training in the art of rhetoric was considered as the foundation of a liberal education and the fitting preparation for the higher walks of life.[47] The study of rhetoric thus held nearly the same place as was occupied later by the "*humaniora*." Even an ethical force was ascribed to it.[48] Seneca relates[49] that Augustus was present together with Agrippa at a declamation of Latro, and that the rhetor Gaius Silo was also heard by Augustus.[50] Later, chairs of rhetoric were established and endowed by the state.[51] Vespasian was the first to do this.[52] Hadrian, noted for his Philhellenism, established at Rome the Athenaeum which was henceforth supported by the emperors and which possessed a chair of rhetoric.[53] The emperors themselves entrusted their children to the rhetorical schools for education.[54] Marcus Aurelius attended the lectures of Hermogenes even after he became emperor.[55] It may be fairly assumed that most of the large cities of Italy had their

[46] Κατὰ τῶν σοφ. (13) 1. 11; Βους. (11), 1; περὶ ἀντιδ. (15) 270 sq.; Ελέν. (66) 6. 66. Cf. Blass, *Gesch. der attischen Bereds.* ii, pp. 26 sq.

[47] Seneca, *Praef. Contr.* ii, 3, thus addresses his son Mela: "eloquentiae tantum studeas; facilis ab hac in omnes artes discursus est; instruit etiam quos non sibi exercet"; cf. also Theo. *Progymnasmata* (*Rhetores Graeci*, ed. Spengel, ii, 70): "*ἡ τῶν προγυμνασμάτων ἄσκησις οὐ μόνον τοῖς μέλλουσι ῥητορεύειν, ἀλλὰ καὶ εἴ τις ἢ ποιητῶν ἢ λογοποιῶν ἢ ἄλλων τινῶν λόγων δύναμιν ἐθέλει μεταχειρίζεσθαι. ἔστι γὰρ ταῦτα οἱονεὶ θεμέλια πάσης τῆς τῶν λόγων ἰδέας . . .*"

[48] Cf. Theo, *ibid.* 60: "*Καὶ μὴν ἡ δια τῆς χρείας γυμνασία οὐ μόνον τινὰ δύναμιν λόγων ἐργάζεται, ἀλλὰ καὶ χρηστόντι ἤθος ἐγγυμναζομένων ἡμῶν τοῖς τῶν σοφῶν ἀποφθέγμασιν.*" Aristides, *Or.* 45, 72 (ed. Dindorf): "*τεττάρων ὄντων μορίων τῆς ἀρετῆς* (sc. *φρονήσεως, σωφροσύνης, δικαιοσύνης, ἀνδρείας*) *ἅπαντα διὰ τῆς ῥητορικῆς πεποίηται, καὶ ὅπερ ἐν σώμασι γυμναστικὴ καὶ ἰατρικὴ, τοῦτ' ἐν τῇ φυσικῇ καὶ τοῖς τῶν πόλεων πράγμασι φθίνεται;*" cf. also Rohde, *Der griech. Roman*, p. 297 foot note.

[49] *Contr.* ii, 4, 12.

[50] *Contr.* x, 14. Cf. also Sueton., *De clar. rhet.* c. 87: "Recitantes et benigne et patienter (sc. Augustus) audiit nec tantum carmina et historias sed et orationes et dialogos."

[51] Cf. Hainmer, *Beitr. zu den* 19 *gross. quintil. Decl.*, pp. 5. 28 sq.

[52] Cf. Sueton., *Vesp.* c. 18: "Primus e fisco Latinis Graecisque rhetoribus annua centena constituit." Hulsebos, *De educ. et inst. apud Rom.*, pp. 101 sq.

[53] Cf. Friedländer, *Darstellung der Litteraturgeschichte Roms* iii, p. 3 4; Rohde, *Der griech. Roman*, p. 291.

[54] Cf. Rohde, *l. c.*; Hainmer, *Beitr. zu den* 19 *gr. quint. Decl.*, p. 29.

[55] Cf. Dio Cassius, lxxi, 1, 2.

teachers of rhetoric.[56] From the middle of the first century A. D. the African schools also assumed importance;[57] so much so that by the time of Juvenal the best advice which that writer would give to a rhetor desirous of making his fortune was that he should go to Africa.[58] Thence in the time of Hadrian came Fronto of Cirta,[59] who had so long and so triumphant a career at Rome as pleader and rhetor: "Orator, consul, teacher of two emperors," as an inscription declares.[60]

2. *Their method of instruction.*

The preparation of the pupil for the rhetorical school was the task of the grammarian, whose duty it was to drill him in the forms and syntax and to initiate him to a certain extent into the national literature. The grammarian, however, often was not content with this important but humble task and trespassed on the field of the rhetorician.[61] As a consequence the pupil came from the grammarian to the rhetorician poorly trained in the elements of language and literature. In the rhetorical school itself the training was a gradual progression from easy exercises to more difficult.[62] It began with the composition of narratives and essays on given themes and subjects from mythology, epideictic speeches and commonplaces, as on vice, virtue, folly, etc., monologues of historical or mythical persons reciting the reasons for and against decision (*suasoriae*). As the last and most difficult stage of the exercises, use was made of fictitious judicial cases in which the pupils took the parts of plaintiff, defendant or advocate (*controversiae*). Obviously also the delivery and the training of the memory were not neglected. But as Quintilian complains about the grammarians, so does he likewise about the rhetors that they considered it beneath their dignity to trouble themselves much about the elementary exercises of their art and were too

[56] Cf. Friedländer, *Darst. der Litt. Roms* iii, p. 394; Rohde, *Der gr. Roman*, p. 301. On the prominence of the schools of Gaul cf. Hainmer, *Beitr. zu den* 19 *gr. quint. Decl.*, pp. 29 sq.; Morawski, *De rhet. Lat*, p. 1.

[57] Cf. Monceaux, *Les Africains*, pp. 58 sq.

[58] Cf. *Sat.* vii, 147–9.

[59] Cf. Monceaux, *Les Africains*, pp. 211, sq.; Simcox, *Lat. Lit.*, p. 243.

[60] Cf. Orelli, *Inscr. Lat.* 11, 76.

[61] Cf. Quintilian, *Inst. Orat.* ii, 1, 1 sq.; "Rhetores utique nostri suas partes omiserunt et grammatici alienas occupaverunt."

[62] Quintil., *ibid.* 1. 9.

fond of hurrying their pupils into the more advanced stage of declamations.[63] As regards their manner of imparting instruction in the rhetorical art, some masters did all the talking themselves, *i. e.* they declaimed and the students merely listened; others began with a recitation which was followed by a discussion between teacher and students; while still others allowed the pupils to declaim.[64] The *declamationes* (*controversiae* and *suasoriae*) of the rhetoricians of the imperial period have become proverbial for speech marked by affectation, insincerity, hollow pathos, fancifulness, inanity of thought and similar characteristics. They did not make their appearance endowed with these qualities all at once. They have quite a long history, and that history confirms the statement previously made that it seems to be inherent in the nature of artistic speech to go astray again and again from the path of naturalness and truthfulness.

The introduction of recitations on fictitious themes as an exercise in oratory is ascribed either to Demetrius Phalereus,[65] or to Aeschines while living in exile at Rhodes.[66] But it may be

[63] *Ibid.* 1, 2: "Nam et illi declamare modo et scientiam declamandi ac facultatem tradere officii sui ducunt."

[64] Cf. Seneca, *Controv.* ix, 2, 23: "Neque enim illi (sc. Latroni) mos erat quemquam audire declamantem; declamabat ipse tantum et aiebat se non esse magistrum, sed exemplum; nec ulli alii contigisse scio quam apud Graecos Niceti, apud Romanos Latroni, ut discipuli non audiri desiderarent, sed contenti essent audire": cf. also Koerber, *Ueber den Rhetor Sen.*, pp. 30 sq.; Friedländer, *Darst. der Litt. Roms* iii, pp. 388–90; Mommsen, *Röm. Gesch.* ii, p. 427; Hainmer, *Beitr. zu den* 19 *gr. quint. Decl.*, p. 6; Rohde, *Der griech. Roman*, pp. 295 sq.

[65] Cf. Quintilian, *Inst. Orat.* ii, 4, 41: "Nam fictas ad imitationem fori consiliorumque materias apud Graecos dicere circa Demetrium Phalereum institutum fere constat. An ab ipso id genus exercitationis sit inventum, ut alio quoque libro sum confessus, parum comperi; sed ne hi quidem qui hoc fortissime affirmant, ullo satis idoneo auctore nituntur."

[66] Philostratus who flourised in the first half of the third century A. D. in his *Vitae Sophistarum* i, l. 18 (ed. Kayser), makes Aeschines, the founder of a Second Sophistic which invented the standard characters of the declamations,—the rich, the poor, the brave, the tyrant, (sc. *ἡ δευτέρα σοφιστικὴ*) *τοὺς πένητας ὑπετυπώτατο καὶ τοὺς πλουσίους καὶ τους ἀριστοὺς καὶ τοὺς τυράννους καὶ τὰς εἰς ὄνομα ὑποθέσεις, ἐφ' ἃς ἡ ἱστορία ἄγει ἦρξε δὲ τῆς μὲν 'αρχαιοτέρας Γοργίας ὁ Λεοντῖνος ἐν Θετταλοῖς, τῆς δὲ δευτέρας Αἰσχίνης ὁ 'Ατρομήτου, τῶν μὲν 'Αθήνησι πολιτικῶν ἐκπεσὼν Καρίᾳ δὲ ἐνομιλήσας καὶ 'Ρόδῳ καὶ μετεχειρίζοντο τὰς ἀποθέσεις οἱ μὲν ἀπὸ Αἰσχίνου κατὰ τέχνην οἱ δὲ ἀπὸ Γοργίου κατὰ τὸ δοξαν*; cf. also Quintil., *Instit. Orat.* xii, 10, 19: "Aeschines enim, qui hunc (sc. Rhodum) exilio delegerat locum, intulit eo studia Athenarum . . ."

truthfully said that ever since eloquence was treated as an art, some kind of exercises has been practised in connection with it. Protagoras caused his pupils to learn by heart examples of such eloquence as were most frequently used. Aristotle in Cicero's *Brutus* mentions these commonplaces as having been composed in writing.[67] In a similar manner Gorgias taught his pupils by models, especially such as either exalted or depreciated things.[68] In fact, all orators in all times have been obliged to train themselves for appearance in public by some sort of exercise in declaiming, only they have made a practice of declaiming on the same themes on which they were afterward to speak or write, while the *μελέται* which arose at the end of the fourth century B. C. were on fictitious subjects with characters which became stereotyped. The Peripatetic and Academic schools had exercises in *θέσεις* and *loci communes* of different kinds.[69] The *μελέται* were specially favored and brought into vogue by the Asian rhetors, who disdained all theoretical preparation and all method and system in the exercise of the art of oratory, caring only to acquire and practise it as a knack;[70] so that the immediate origin of the declamations in the imperial period is to be found among the Asians.[71] We have an interesting notice in Seneca:[72] "Declamabat autem Cicero non quales nunc controversias dicimus, ne tales quidem, quales ante Ciceronem dicebantur, quas thesis vocabant.

[67] Cicero, *Brutus* xii, 46: "Itaque ait Aristoteles . . . scriptasque fuisse et paratas a Protagora verum illustrium disputationes, quae nunc communes appellantur loci."

[68] *Ibid.* 47: "Quod idem fecisse Gorgiam, cum singularum rerum laudes vituperationesque conscripsisset; quod iudicaret hoc oratoris esse maxime proprium, rem augere posse laudando vituperandoque rursus adfligere"; cf. also Aristotle, *Sophist. Elench.* c. 34, 6. 36; Quintilian, *Inst. Orat.* iii, 1, 12 sq.; Blass, *Gesch. der att. Bereds.* i, p. 54.

[69] Cf. Quintilian, *Instit. Orat.* xii, 2, 25: "Academiam quidam utilissimam credunt, quod mos in utramque partem disserendi ad exercitationem forensium causarum proxime accedat. . . . Peripatetici studio quoque se quodam oratorio iactant. Nam theses dicere exercitationis gratia fere est ab iis institutum"; Cicero, *Orator* xiv, 46: "Haec igitur quaestio a propriis personis et temporibus ad universi generis orationem traducta appellatur *θέσις*. In hac Aristoteles adolescentes non ad philosophorum morem tenuiter disserendi, sed ad copiam rhetorum in utramque partem, ut ornatius et uberius dici possit, exercuit."

[70] Cf. Blass, *Die griech. Bereds.*, pp. 55 sq.

[71] Cf. Blass, *l. c.*, p. 60; Jebb, *The Attic Orators* ii, p. 447.

[72] *Praef. Contr.* i, 12.

Hoc enim genus materiae, quo nos exercemur, adeo novum est, ut nomen quoque eius novum sit. Controversias nos dicimus: Cicero causas vocabat. Hoc vero alterum nomen Graecum quidem, sed in Latinum ita translatum, ut pro Latino sit, scholastica, controversia multo recentius est, sicut ipsa 'declamatio' apud nullum antiquum auctorem ante Ciceronem et Calvum inveniri potest, qui declamationem a dictione distinguit; ait enim declamare iam se non mediocriter, dicere bene, alterum putat domesticae exercitationis esse, alterum verae actionis. Modo nomen hoc prodiit; nam et studium ipsum nuper celebrari coepit." This passage will be referred to more fully later, but here the following conclusions may be drawn from it: Before Cicero's time not only pupils in the schools declaimed but also public orators, at their homes however, as an exercise and preparation for their appearance in public; at the time of Cicero and Calvus "declamare" became a special term for a kind of recitation distinguished from the delivery of a speech, "dictio, dicere," while the "controversia," the equivalent of the Greek "θέσις," formed the latest phase of declaiming.[73] We may add that the writing of compositions was recommended as the most effective means of obtaining a good style,[74] and also the paraphrasing of both prose and poetry,[75] as well as translation from Greek into Latin.[76]

[73] Cf. Bonnell, *De mut. sub prim. Caes. Eloq.*, pp. 16 sq. Bonnell remarks that the word "declamare" does not occur before Cicero. Its simple and original meaning was "clamando vel vehementer dicendo aliquid prodere." Cf. Cicero, *Verr.* iv, 66: "Ille autem insanus, qui pro isto vehementissime contra me declamasset." Even after the word had been adopted to express exercise in oratory, "declamatio" in Cicero's time was used for the action of declaiming, "declamandi actio" and only later came to signify a work "opus," as opposed to an oration delivered in court.

[74] Cf. Cicero, *De orat.* i, 33, 150: Caput autem est . . . quam plurimum scribere.

[75] Cf. Cicero, *ibid.* 154: "... solitum esse uti sciebam (sc. C. Carbonem), ut aut versibus propositis quam maxime gravibus aut oratione aliqua lecta ad eum finem, quem memoria possem comprehendere, eam rem ipsam, quam legissem, verbis aliis maxime possem lectis pronuntiarem."

[76] Cf. Cicero, *ibid.* 155: "Postea mihi placuit, eoque sum usus adulescens, ut summorum oratorum Graecas orationes explicarem. Quibus lectis hoc adsequebar, ut, cum ea, quae legeram Graece, Latine redderem, non solum optimis verbis uterer et tamen usitatis, sed etiam exprimerem quaedam verba imitando, quae nova nostris essent, dum modo essent idonea"; cf. also Quintil., *Inst. Orat.* x, 5, 2 sq.: Vertere Graeca in Latinum veteres nostri oratores optimum iudicabant.

a. *Various kinds of declamations in the imperial period.*—As the methods of teaching varied so also did the exercises employed.[77] The passage quoted from Seneca[78] gives the key to their division. He says: "Declamabat autem Cicero non quales nunc controversias dicimus, ne tales quidem, quales ante Ciceronem dicebantur, quas thesis vocabant.... Controversias nos dicimus: Cicero causas vocabat." It would thus seem that we should distinguish three periods of the declamation: 1. In the time previous to Cicero there were declamations on θέσις. The term was introduced into rhetoric by Hermagoras, who divided the entire material of the speaker into θέσις and ὑπόθεσις, which Cicero renders by "quaestio" and "causa" respectively. The difference between them is that the θέσις is the discussion of a case in a general, indefinite manner, without attaching it to definite persons and circumstances, while the ὑπόθεσις on the other hand has them, so that it becomes more special, individual, and concrete.[79]

[77] Cf. Suetonius, *De clar. rhet.* c. 1: "Ratio dicendi nec una omnibus."

[78] *Praef. Contr.* i, 12.

[79] Cf. Cicero, *De inventione* i, 6, 8: "Nam Hermagoras quidem nec quid dicat attendere nec quid policeatur intelligere videtur, qui oratoris materiam in causam et quaestionem dividat. Causam esse dicat rem, quae habebat in se controversiam in dicendo positam cum personarum certarum interpositione; quam nos quoque oratori dicimus attributam . . . Quaestionem autem appellet, quae habeat in se controversiam in dicendo positam sine certarum personarum interpositione ad hunc modum: Ecquid sit bonum praeter honestatem? verine sint sensus? quae sit mundi forma? quae sit solis magnitudo?" Cf. Thiele, *Hermagoras*, pp. 30 sq. Thiele says that Hermagoras understood by θέσις any ζήτημα (= πρόβλημα) of a general nature. "He recommended to the orator to speak not only on definite judicial cases or on definite questions of internal or external politics, but also on themes which were not of a political nature and on abstract questions, so that one might be a ῥήτωρ, and a σοφιστής at once. By this, rhetoric seemed to acknowledge a desire to make itself mistress of the highest and most important problems which philosophy had put forward." Hence the criticism of Cicero, cf. *De orat.* i, 31, 38; ii, 10, 41 sq.; 19, 78; 31, 133; iii, 28, 109. *Orator* xiv, 46 previously quoted. Cf. also Quintil., *Inst. Orat.* iii, 5, 5 sq.: "Item convenit quaestiones esse aut infinitas aut finitas. Infinitae sunt, quae remotis personis et temporibus et locis ceterisque similibus in utramque partem tractantur, quod Graeci θέσιν dicunt, Cicero propositum, ... alii quaestiones philosopho convenientes, ... Finitae autem sunt ex complexu rerum, personarum, temporum, ceterorumque; quae ὑπόθεσις a Graecis dicuntur, causae a nostris. In his omnis quaestio videtur circa res personasque consistere." The render-

The θέσις then embraced themes on anything and everything, and to the same category of themes of a general and indefinite nature belong also the *loci communes*,[80] which were much in favor at Rome in the early period on account of their simplicity.[81]

2. About the time of Cicero arose the ὑπόθεσις (causae), *i. e.*, as stated in note 79, exercises on specialized cases, with the introduction of definite persons and circumstances; they were formed from real life, either in its daily routine in the courts, or taken from history which included also mythology.[82] The *causae* also included such exercises as were known later by the name of *suasoriae*, for which history and mythology offered ample material.[83]

3. In the imperial period, although they may not have been entirely unknown before Augustus,[84] there came into vogue declamations on entirely fictitious themes taken from the realm of the imagination; of these we have specimens in the Controversiae of Seneca and the declamations which bear the name of Quintilian.[85]

ing "propositum" for θέσις is used by Cicero in *Topica* 21, 79: *De part. orat.* i, 4: "consultatio"; 18, 61: "propositum" again; both combined in *De orat.* iii, 28, 109: "quasi propositaconsultatio." Of the definitions of the Greek rhetoricians; that of Theo in his προγυμνάσματα (Spengel, *Rhet. Graeci* ii, 120) seems to contain essentially the words of Hermagoras himself (cf. Thiele, *Hermagoras*, p. 28): "θέσις ἐστὶν ἐπίσκηψις λογικὴ ἀμφισβήτησιν ἐνδεχομένη ἄνευ προσώπων ὡρισμένων καὶ πάσης περιστάσεως. As an illustration Theo gives (Spengel ii, 61): οἷον θέσις μὲν εἰ προσήκει πολιορκουμένοις στράτευμα πέμπειν εἰς τὴν ὑπερορίαν, ὑπόθεσις δὲ εἰ Ἀθηναίοις προσήκει πολιορκουμένοις ὑπὸ Πελοποννησίων εἰς Σικελίαν στράτευμα πέμπειν"; cf. Alexander (Spengel iii, 1); Hermogenes προγυμν. (Spengel ii 17). For the distinction between "quaestiones cognitionis" (theoretical) and "quaestiones actionis" (practical) cf. Cicero, *De orat.* iii, 29, 111 sq.; *Topica* 21, 81, and Piderit's Introduction to Cicero, *De orat.* ii, § 2.

[80] Cf. Quintil. *Inst. Orat.* ii, 4, 22 sq., 27–40; Cicero, *De orat.* iii, 28, 109.

[81] Cf. Blass. *Die griech. Bereds.*, p. 110.

[82] Cf. Cicero, *De orat.* i, 33, 149; "Equidem probo ista, Crassus inquit, quae vos facere soletis, ut, causa aliqua posita consimili causarum earum, quae in forum deferuntur, dicatis quam maxime ad veritatem accommodate"; Suetonius, *De clar. rhet.* c. 1; Cicero, *De inventione* i, 49, 92; cf. also Friedländer, *Darstellung der Litt. Rom* iii, p. 388.

[83] Cf. Blass, *Die gr. Bereds.*, p. 111.

[84] *Ibid.*, p. 108.

[85] Cf. Bonnell, *De mut. sub prim. Caes. eloq.*, p. 17. Bonnell observes that the word "suasoria" does not occur at all in Cicero, while "controversia" occurs only with the meaning of dispute or quarrel, strife ("sed rixam et pugnam significans").

b. *Character of the declamations of the imperial period.*—It is well known that the chief characteristics of the declamations in vogue during the imperial period were that they were not practical, that they ignored real life, disregarded truth, and indulged in the paradoxical and absurd. "The rhetorical school," says Friedländer,[86] "created for itself in the course of time its own fantastic world, which was separated from life by a wide chasm over which no bridge was leading." This rhetorical departure was not an absolutely new one. As remarked above, artistic speech seems to have always had a tendency to deviate from verity and naturalness. Examples may be found earlier than Asianism. Thus Corax of Syracuse, who lived at the beginning of the fifth century B. C., is alleged to have defined rhetoric as πειθοῦς δημαγωγός, and his disciple and successor Tisias, the first to write on the technique of rhetoric,[87] teaches in regard to the finding of arguments that the orator is not to concern himself about the truth but to be content with the εἰκός, to make anything appear probable or improbable just as it suits his interest.[88] Protagoras promised to teach τὸν ἥττω λόγον κρείττω ποιεῖν.[89] The "τέχνη" of Anaximenes was openly proclaimed to have no other object than to furnish any one who followed it, be he right or wrong, with the means to defeat his adversary even if the latter were indisputably in the right, and to deceive the judge.[90] "Many a celebrated oration of antiquity," says Spengel,[91] "is nothing else than an incontestable proof that external splendor and brilliancy concealed the truth by the appearance of truth." The Tetralogies of Antiphon (orations xiii–xv) exhibit in their arguments much sophistical casuistry and chicanery. We find oratory constantly

[86] *Darstellung der Litt. Roms* iii, p. 391.

[87] Cf. Cicero, *De inventione* ii, 6: "Ac veteres quidem scriptores artis usque a principe illo atque inventore Tisia . . ."; Plato, *Phaedr.* 267ª 273ª f.; Arist., *Rhet.* ii, 24 (Spengel, *Rhet. gr.* i, 116 sq.). The work is referred to as that of Corax.

[88] Cf. Aristotle, *Rhet.* ii, 24 (Spengel, *Rhet. Gr.* i, 167): "φαίνεται μὲν οὖν ἀμφότερα εἰκόντα, ἔστι δὲ τὸ μὲν εἰκὸς τὸ δὲ οὐχ ἁπλῶς, ἀλλ' ὥσπερ εἴρηται." He illustrates by an example; cf. also Spengel, *Ueber das Studium*, etc., p. 8.

[89] Cf. Plato, *Phaedr.* 267ª; Arist., *Rhet.* ii, 24 (Spengel, *Rhet. Gr.* i, 167); Aristophanes, *Clouds*, 112–15; Gellius, *Noct. Att.* v, 3, 7; Diogenes Laertius, 9, 52; Socrates also was charged with this, cf. Plato, *Apology* 19b.

[90] Cf. Spengel, *Ueber das Studium*, etc., p. 9.

[91] *Ibid.* p. 14, cf. the numerous examples in illustration of this observation, pp. 14–16.

applying itself to futile discussions and absurd and perverse paradoxes. Pericles is said to have engaged in discussion with Protagoras an entire day on the following case: A Pentathlete in the races inadvertently killed with his spear the Thessalian Spitinos; the question was, who was the author of the accident: The Pentathlete because he hurled the spear, or those in charge of the race because they arranged it in such a manner, or finally the spear itself because it passed in such a way as to hit the unfortunate Spitinos.[92] Isocrates complains of those composers of epideictic speeches who selected the most paradoxical topics for their subjects.[93] Thus Polycrates (born before 436 B. C.) composed speeches in defence of Busiris and in accusation of Socrates,[94] eulogies on Clytaemnestra,[95] on mice,[96] pots, and voting pebbles.[97] Others praised the lot of beggars and exiles,[98] made a hero of Paris,[99] or selected salt and drinking-vessels as objects of encomium.[100] Among the Romans we find traces of these exercises in Cornificius and Cicero.[101] With the rhetoricians of the imperial epoch such exercises became the rule and what is of more importance still, not exercises as a means preparatory to cases in real life, which was their import even with the Asian orators, but they came to be regarded as an end in themselves.[102] As such they attained an extraordinary importance. Life in the forum and in the courts was considered as a trade, to which were attached all the evils of greed and ambition; the declamations on the other hand were considered as purely scientific and promoting the cultivation of the mind. Pliny[103] says of Isaeus, his contemporary: "Annum sexagesimum excessit et adhuc scholasticus tantum est; quo genere hominum nihil aut simplicius aut sincerius aut melius; nos enim, qui in foro verisque litibus terimur, multum malitiae quamvis nolimus addiscimus, schola et auditorium, ut ficta causa, ita res inermis, innoxia est nec minus felix senibus praesertim."[104] As regards the subject-matter of the *controversiae* of Seneca and the *declamationes* of the pseudo-Quintilian, all the themes are taken from the domain of jurisprudence. This seemed the least dangerous ground for a display of rhetorical pyrotechnics under an autocratic rule. There was the additional advantage that these subjects allowed a great variety of interpretation and argument and afforded opportunity for a display of rhetorical art.[105] But aside from the judicial formula to which the treatise is attached all is imaginary.[106] Many of the cases on which the judicial discussions are based, those for instance bearing on tyrants and tyrannicide,[107] have no application to Roman life, and most of them are unnatural, extravagant, absurd and not infrequently indecent. Of the 74 themes in Seneca's Controversiae, 19 have to

[92] Cf. Plutarch, *Pericles* c. 35.

[93] Ἑλένη (10) 1 f.: "εἰσί τινες οἳ μέγα φρονοῦσιν, ἢν ὑπόθεσιν ἄτοπον καὶ παράδοξον ποιησάμενοι περὶ ταύτης ἀνεκτῶς εἰπεῖν δυνηθῶσι κ. τ. λ."; Βουσ. (11) 49; cf. Spengel, *Ueber das Studium*, etc., p. 17. An example of this fictitious oratory by Lysias is given in Plato's *Phaedr.* 231 A–234 C.

[94] Cf. Isocrates, Βουσ. (11), 4 sq.

[95] Quintilian, *Inst. Orat.* ii, 17, 4.

[96] Aristotle, *Rhet.* ii, 24 (Spengel, *Rhet. Graec.* i, 165).

[97] Cf. Alexander Rhetor, Spengel iii, 3.

[98] Cf. Isocrates Ἑλένη (10), 8.

[99] Cf. Aristotle, *Rhet.* ii, 24 (Spengel, *Rhet. Graec.* i, 165).

[100] Cf. Plato, *Symp.* 177b.

[101] Cf. Cicero, *De invent.* ii, 40, 118: "Meretrix coronam auream ne habeto; si habuerit publica esto."

[102] Cf. Blass, *Die griech. Bereds.*, pp. 60 sq.

[103] *Epist.* ii, 3.

[104] Cf. Spengel, *Gelehrte Anzeigen der bayrischen Akademie der Wissenschaften* xlvii (1858), pp. 10 sq.

[105] Cf. Latro in Seneca, *Controv.* ix, 4, 9: "In lege . . . nihil excipitur, sed multa, quamvis non excipiantur, intelleguntur et scriptum legis angustum, interpretatio diffusa est"; cf also Koerber, *Ueber den Rhetor Seneca*, p. 37.

[106] Cf. some of the themes: Seneca, *Contr.* i, 1: Liberi parentes alant aut vinciantur; i, 2: Sacerdos casta ex castis, pura e puris sit.; i, 5: Rapta raptoris aut mortem aut indotas nuptias optet; Quintilian, *Declam.* ccxliv: Qui depositum infitiatus fuerit, quadruplum solvat, etc. Petronius, *Sat.* i (directed against the rhetoricians) ll. 10 sqq. enumerates some of the subjects treated in the rhetorical schools: "Piratas cum catenis in litore stantes; tyrannos edicta scribentes, quibus imperent filiis, ut patrum suorum capita praecidant; responsa in pestilentiam data, ut virgines tres aut plures immolentur"; Tacitus, *Dial.* c. 35: "Sic fit, ut tyrannicidarum praemia aut vitiatarum electiones aut pestilentiae remedia aut incesta matrum aut quidquid in schola cotidie agitur, in foro vel raro vel nunquam, ingentibus verbis persequantur"; cf. also Juvenal, Sat. vii, 150 sq.; Quintilian, *Instit. Orat.* ii, 10, 3–5. Quintilian mentions also the "magos," which must have been a later addition to the repertoire of the rhetoricians, for in Seneca they do not yet occur; cf. Simcox, *Latin Literature*, pp. 433 sq. (c. viii).

[107] Cf. Seneca, *Contr.* ii, 5. iii, 6; Quintilian, *Declam.* ccxliii, cclxix, cclxxi, etc.; also Seneca, *Contr.* v, 3: Pater pancratiastae.

do with immoral relations,[108] 7 with tyrants,[109] 7 with poisoning or attempts at it,[110] 14 with disinheriting children (abdicatio).[111] Others are no less unnatural and perverse. Fictitious, even impossible, relations and circumstances are presupposed; the parties are placed in the strongest possible conflicts of equally sacred duties and strong emotions and sympathies, and are made to do or order to be done the most monstrous things.[112] Many of the cases treated in the Controversiae and Declamationes were probably analogous to scandalous occurrences in real life in decadent Rome. Compare for instances Tacitus, *Annales* ii, 74; iii, 1, on the poisoner Matina; iv, 1, the rumor about Seianus, Tiberius, and Drusus; iv, 22, on the murder of his wife by Plautius Silvanus; xiv, 44.[113] But in general it may be said that the rhetoricians of this period turned away from the affairs of real life with a certain haughty disgust. "De magnis maiora loqui"[114] seems to have been their motto, and to them the equivalent of "magna" was the uncommon and the bizarre.[115] Such fictitious themes on cases frequently of a revolting and abhorrent nature, required in their treatment an extraordinary and constant straining and forcing of ideas and language, in order to hold the attention of an idle and blasé audience which had no other interest than diversion and distraction. The fact that the same subjects were treated by several rhetoricians, spurred them to do their utmost in subtleties

[108] i, 2, 3, 4, 5, 7; ii, 3, 4, 7; iii, 5; iv, 3, 7; v, 6; vi, 6, 8; vii, 5, 6, 8; viii, 6; ix, 1.

[109] i, 6; ii, 5; iii, 6; iv, 7; v, 8; vii, 6; ix, 4

[110] iii, 3, 8; vi, 4, 6; vii, 3; ix, 5, 6.

[111] i, 1, 8; ii, 1, 2, 4; iii, 3, 4; v, 2; vi, 1; vii, 1, 3. "It is remarkable," says Friedländer, *Darst. der Litt. Roms* iii, p. 393, "and shows most clearly the novellistic character of these inventions, that the collection of Seneca had been frequently and with evident predilection used in a collection of novels and anecdotes which was very popular in the Middle Ages as an entertaining book" (the *Gesta Romanorum*); in *De Sen. Controv. in Gest. Rom. adhib.* Friedländer gives parallel passages from both works.

[112] Cf. Seneca, *Contr.* i, 1, 3, 4, 7; vi, 2, 7; vii, 7; x, 3, 4; Friedländer, *Darstell. der Litt. Roms* iii, pp. 392 sq.; Quintilian, *Decl.* ccxxiv, ccxxiii.

[113] Cf. Hainmer, *Beitr. zu den 19 gross. quintil. Decl.*, p. 7.

[114] Cf. Juvenal, *Sat.* iv, 17.

[115] Cf. Quintilian, *Inst. Orat.* viii, 3, 71 in protest: "Naturam intueamur, hanc sequamur. Omnis eloquentia circa opera vitae est, ad se refert quisque quae audit, et id facillime accipiunt animi, quod agnoscunt."

and surprising turns of thought and expression[116]—the "inopinatum" at any cost—so that the treatise became a mosaic of involved *dicteria*.[117] Having no attainable object, nothing to stir the heart and rouse the emotions, the rhetor could only by force of imagination enter into the spirit of his theme, finding all the points of opportunity it afforded for displaying the elegance of his style and his skill in speaking on any subject, for and against, making "the small great and the great small."[118] The characteristics of the oratory of the declamators are thus compared with the oratory of the courts by Cassius Severus: "Ego tamen et propriam causam videor posse reddere; adsuevi non auditorem spectare, sed iudicem; adsuevi non mihi respondere, sed adversario; non minus devito supervacua dicere quam contraria. *In scholastica quid non supervacuum est cum ipsa supervacua sit?* Indicabo tibi affectum meum: cum in foro dico, aliquid ago; cum declamo, id quod bellissime Censorinus aiebat de his, qui honores in municipiis ambitiose peterent, videor mihi *in somniis laborare.* Deinde res ipsa diversa est: *totum aliud est pugnare, aliud ventilare.* Hoc ita semper habitum est, scholam quasi ludum esse, forum arenam."[119] These hothouse orators when exposed to the

[116] Besides the speaking by contemporaries on stock subjects, we find that the same themes were declaimed upon repeatedly, cf. Seneca, *Contr.* ii, 3 with Quintilian, *Decl.* cccxlix; *Contr.* ii, 5 with *Decl.* ccli; *Contr.* iii, 9 with *Decl.* ccclxxx; *Contr.* iv, 4 with *Decl.* ccclxx; *Contr.* vi, 5 with *Decl.* ccc; *Contr.* vi, 6 with *Decl.* cccliv; *Contr.* ix, 6 with *Decl.* ccclxxxi; *Contr.* x, 2 similar to *Decl.* cclviii. How completely this artificiality of both matter and form became identified with antique rhetoric, and how persistently it held its own may be noted from the fact that the *Dictiones* of Ennodius at the end of the fifth century A. D. are still busy with the old themes of step-mothers, tyrannicides, etc., although there is a marked decadence in the manner of their treatment. Cf. Ennodius, *Dict.* xv and xviii.

[117] Cf. Seneca, *Praef. Contr.* i, 21: Nihil est iniquius his, qui nusquam putant esse subtilitatem, nisi ubi nihil est praeter subtilitatem.

[118] Cf. Plato, *Phaedr.* 267 A. Again we find in Ennodius's Epistle on Education the old familiar claim that rhetoric is the crown of the sciences, able to make black white and white black: "Post apicem divinitatis ego illa sum, quae vel commuto si sunt facta vel facio. . . . Si noster tantum,—non stringunt crimina quemquam Nos vitae maculas tergimus artis ope Si nives constet merito quis teste senatu. Cogimus hunc omnes dicere nocte satum." A sweeping claim indeed for the "pomposa recitatio." Cf. Ennodius, *Ambrosio et Beato*, Opusc. vi, pp. 407, 408, ed. Hartel.

[119] Cf. Seneca, *Praef. Contr.* iii, 12 sq. See also *Praef. Contr.* ix, 2.

fresh air of real life, were entirely out of their element and became confused: "Agedum istos declamatores produc in senatum, in forum; cum loco mutabuntur; velut adsueta clauso et delicatae umbrae corpora sub divo stare non possunt, non imbrem ferre, non solem sciunt, vix se inveniunt, adsuerunt enim suo arbitrio diserti esse. Non est quod oratorem in hac puerili exercitatione spectes. Quid si velis gubernatorem in piscina aestimare?"[120] The rhetor Porcius Latro being called to defend a relation, became so confused under the open sky of the forum that at his request the court was transferred to a basilica.[121] The original object of these exercises, viz. to prepare for actual life, was entirely lost sight of.[122] The whole affair was a piece of theatrical ostentation to amuse the audience and satisfy the vanity of the teachers.[123] Hence the selection of subjects fit for grandiloquence,[124] for the inflated vanity of the rhetoricians was one of the roots of the evil. They did not care for the truth or even good sense, but to win the applause of the public. Complaints of the vociferous clamors of the schools are numerous.[125] Still in fairness it should be added that not all the blame was laid upon the rhetoricians by those of their contemporaries who deplored most bitterly the corrupting influence of this

[120] *Ibid.*, *Praef. Contr.* iii, 13 sq.

[121] *Ibid.*, *Praef. Contr.* ix, 3; cf. also Quintilian, *Inst. Orat.* x, 5, 18.

[122] Cf. Seneca's idea of an exercise as he describes it. *Praef. Contr.* ix, 4: Non est autem utilis exercitatio, nisi quae operi simillima est, in quod exercet . . .

[123] Cf. Quintilian, *Instit. Orat.* ii, 10, 8 sq: "Nam si foro non praeparat; aut scaenicae ostentationi aut furiosae vociferationi simillimum est . . ."; cf. also vii, 2, 54; x, 2, 12; 7, 21.

[124] Cf. Morawski, *De rhet. lat.*, p. 9.

[125] Cf. Seneca, *Contr.* ix, 6, 12: "Et aiebat Cestius; quod si ad deridendum me dixit, homo venustus fuit, et ego nunc scio me ineptam sententiam dicere; multa autem dico non quia mihi placent, sed quia audientibus placitura sunt." As to the applause cf. *Contr.* ii, 1, 36; vii, 4, 10; ii, 3, 19: "Cum scholasticorum summo fragore," the absence of which in the forum was one of the causes of the discomfiture of the rhetoricians when there; cf. *Praef. Contr.* ix, 2; "Cum ventum est ad forum et desiit illos ad omnem gestum plausus excipere, aut deficiunt aut labant"; Quintilian, *Inst. Orat.* ii, 2, 10: "Illa vero vitiosissima quae iam humanitas vocatur, invicem qualiacunque laudandi, cum est indecora et theatralis et severe institutis scholis aliena . . ."; iv, 1, 77; 3, 1; ix, 4, 62; cf. also Seneca the philosopher, *Epist.* 54, 12. From the schools this theatrical misdemeanor found its way into the courts, cf. Pliny, *Epist.* ii, 14; Morawski, *De rhet. lat.*, p. 8, foot note.

kind of education. It was demanded by the superficial tendency of the time, and the rhetoricians as children of their time simply met this demand. False oratory was an effect more than a cause: ". . . talis hominibus fuit oratio qualis vita."[126] Petronius, who attacked the rhetors in the most unsparing manner, says:[127] "Nihil nimirum in his exercitationibus doctores peccant, qui necesse habent cum insanientibus furere. . . . Quid ergo est? parentes obiurgatione digni sunt, qui volunt liberos suos severa lege proficere. . . ." Tacitus[128] says: "Quis enim ignorat et eloquentiam et ceteras artes descivisse ab illa vetere gloria non inopia hominum, sed desidia iuventutis et negligentia parentum et inscientia praecipientium et oblivione moris antiqui."[129]

The Controversiae.—The form and division of the Controversiae are given in the title of Seneca's works: "Oratorum et rhetorum sententiae, divisiones, colores."

1. The *Sententiae*, like the inventio, contain the material necessary for judging the case; they give the opinions of the different rhetors with regard to the legal status of the case under consideration, *i. e.* whether the legal formula premised is applicable to the case, and if so, how far? This is subdivided into *pars prior* and *pars altera* (or with the second part introduced by *contra*), giving the pro and con or the *accusatio* and *defensio*.

2. The *divisio*, like the *dispositio*, analyzes and arranges the material into various *quaestiones* or points of view from which the case is argued. Seneca[130] points out that the divisio of the rhetoricians of his time became more subtle than that of former times. As a matter of fact the divisio was often split up into endless subdivisions, without gain to either clearness or force. As a rule moreover the divisio consisted of a mere skeleton of the quaestiones and their subdivisions.[131]

3. The *colores* are the extenuating reasons for a punishable

[126] Seneca philos., *Epist.* 114, 1 sq.; cf. also Cucheval, *Hist. de l'éloq. rom.* i, p. 235; ii, p. 368.

[127] C. 3 sq.

[128] *Dialogus* c. 28.

[129] Cf. also Quintilian, *Inst. Orat.* ii, 4, 15 sq. (on the vanity of the parents); Persius, Sat. iii, 46 sq.

[130] *Contr.* i, 1, 13.

[131] Cf. Seneca, *Praef. Contr.* vii, 2, where Albucius is reproached for treating the divisio more fully. As an example may be given the divisio 1, 3, 8. A vestal for the sin of incest was thrown from the Tarpeian Rock,

deed, which however were not founded upon facts but merely invented by the rhetoricians.[132] In fact the colores were the revelling ground for the wits of the rhetoricians where they indulged to the full in subtleties, casuistries, and absurdities of invention. Their methods of defence may be shown by the following example. In defence of one, who maimed exposed children and then forced them to beg for his benefit, Gallio adduces:[133] "Egentem hominem et qui ne se quidem alere necdum alios posset, sustulisse eos, qui iam relicti sine spe vix spiritum traherent, quibus non iniuria fieret, si aliquid detraheretur, sed beneficium daretur, si vita servaretur. Faciant invidiam, dicant alicui oculos deesse, alicui manus dicant illos per hunc tam misere vivere, dum fateantur per hunc vivere." He even attempted to set up this brute as a public benefactor: "Adeo . . . . haec res non nocuit reipublicae, ut possit videri etiam profuisse: pauciores erunt qui exponant filios." The condition of a slave should be looked upon in a favorable light because: "Et nos nuper servos fuisse. Rettulit Servium regem."[134] If an historical fact was involved and the case as it really occurred did not suit the pleader, he had no scruple about altering it.[135]

but was not killed. The issue is: Whether she ought to be thrown a second time. Latro makes the following divisio: "Utrum lex de incesta tutam esse velit quae deiciatur nec pereat; an damnata, etiamsi innocens post damnationem adparuit, deici non debeat; an haec innocens sit; an haec deorum adiutorio servata sit." Cestius then subdivided the last question: "An dii immortales humanarum rerum curam agant; si singulorum agunt an huius egerint." Fuscus Arellius offers the following divisio: "Utrum incestae poena sit deici an perire; utrum providentia deorum an casu servata sit; si voluntate deorum servata est, an in hoc, ut crudelius periret." Comment is needless.

[132] The rhetoricians themselves made a distinction between *defensio* and *color*, cf. Seneca, *Contr.* vii, 6, 17: "A parte patris magis defensione opus esse dicebat Latro quam colore." The color also served to give a weak point, which was to be defended, a plausible aspect. It also served to mention things under another name for the sake of decency, cf. Quintilian, *Inst. Orat.* iv, 2, 88: Id interim ad solam verecundiam pertinet, unde etiam mihi videtur dici color. Tacitus (*Dialogus* c. 20) speaks of the "color sententiarum" as parallel to the "nitor et cultus descriptionum," where it is probably equivalent to our color or vividness of speech. Cf. also Ernesti, *Rhet. lex.*; Mayor's edition of Juvenal on *Sat.* vii, 155.

[133] Seneca, *Contr.* x, 4, 15.

[134] *Ibid.* vii, 6, 18.

[135] Cf. *ibid.* vii, 2, 8: "Declamatoribus placuit parricidi reum fuisse . . .," cf. Hainmer, *Beitr. zu den* 19 *gross. quintil. Decl.*, p. 6.

The Suasoriae.—While the Controversiae were taken from the *genus iudiciale*, the Suasoriae belonged to the *genus deliberativum* and related to historical or mythical persons, answering the question what some such person was to do in a certain condition or situation. Hence in contrast to the Controversiae, into the Suasoriae names were introduced. In the curriculum of the rhetorical schools the Suasoriae, being the more simple and easy, were the exercises used in the beginning; the Controversiae being more varied and complex, formed the last state in the training of the future orator.[136] A Suasoria may be simple, merely the question whether a certain thing is or is not to be done;[137] or duplex, where there is a choice between two alternatives;[138] or triple, where there are three alternatives.[139] The Suasoriae are generally characterized by the absence of an artistic plan and arrangement of the parts; the speaker approaches the subject without an introductory proem and discusses it in an elevated sometimes excited and even harsh tone.[140] In the Suasoriae stress was laid not so much on the argumentation as on the description of the effects which might result from taking or omitting the step under deliberation.[141] The division of the Suasoriae is likewise simple. They consist of two parts; the first may be termed *tractatio*; it gives the formal discourse on the question. The second part, superscribed *divisio*, is an informal and personal review or report by Seneca of the sayings and comments of the rhetoricians, intermingled with reminiscences, anecdotes, and an occasional excursus.

As has been already stated, the defects of the declamations

[136] Cf. Westermann, *Geschichte der Beredsamkeit* ii, p. 267 §81; Tacitus, *Dial.* c. 35: "Ex his suasoriae quidem, tamquam plane leviores et minus prudentiae exigentes, pueris delegantur, controversiae robustioribus adsignantur."

[137] Cf. Seneca, *Suas.* i and vi.

[138] *Ibid.* ii; iii; iv; v; vii.

[139] Cf. Quintilian, *Inst. Orat.* iii, 8, 33: "Pompeius deliberabat Parthos an Africam an Aegyptum peteret." For the Suasoria simple and duplex cf. *l. c.* 19 sq.

[140] Cf. Quintilian, *l. c.* 8, 58 sq., 69. He censures this as an error of the declamators.

[141] Hence Ovid's fondness for Suasoriae and aversion to Controversiae, cf. Seneca, *Contr.* ii, 2, 12: "Declamabat autem Naso raro controversias et non nisi ethicas; libentius dicebat suasorias; molesta illi erat omnis argumentatio"; cf. also *Praef. Contr.* ii, 3; iii, 10 sq.

of the imperial period were in general the same as those of Asianism,—lack of moderation, false pathos, a childish striving for the "inopinatum" in thought and form, frigid ἀστεϊσμοι, perverse ingenuity, and an ostentatious display of the speaker's art instead of its concealment. At the same time it must be admitted that some of the rhetoricians handled this apparatus with great skill and even with elegance. The following are a few examples taken at random: "Nullum iam tibi vulnus nisi per cicatricem imprimi potest";[142] "Charybdis ipsius maris naufragium";[143] "Duplici beneficio uxori suae obligatus est: quod non est occisus et quod occidit";[144] "Ciceronis proscriptio fuit occidi, mea occidere";[145] "Modum tu magnitudini facere debes, quoniam Fortuna non facit. . . Alexander orbi magnus est Alexandro orbis angustus est";[146] "Ergo tibi, soror, ut honestos habeas liberos, adulterandum est?";[147] "Amisi uxorem, liberos, patrimonium, fortuna mihi nihil praeter laqueum reliquit, iste nec laqueum";[148] "Quidquid avium volitat, quidquid piscium natat quidquid ferarum discurrit, nostris sepelitur ventribus, quaere nunc cur subito moriamur: mortibus vivimus."[149] Instances of lack of *modus* and *iudicium* in descriptions of cruelty and other abhorrent things are found in Contr. x, 4, 2 and ix, 2, 4. How far the rhetoricians could go in silliness and absurdity is shown in Praef. Contr. vii, 8, where Albucius asks; "Quare calix si cecidit frangitur, spongia si cecidit non frangitur?" To which Cestius aptly replied: "Ite ad illum cras, declamabit vobis, quare turdi volent, cucurbitae non volent." Instances of this sort might be multiplied indefinitely. Favorite digressions of the rhetor were inveighings against the corruption of the times,[150] and moralizings on the instability of fortune.[151] Still there are found among these excrescences of an overstrained imagination real gems of wisdom: "Optimus virtutis finis est, antequam deficias desinere";[152] "Magni pectoris est inter secunda moderatio";[153] "Magis deos miseri quam beati colunt";[154] "Nulla satis pudica est de qua quaeritur";[155] "Ludit de suis fortuna muneribus et quae dedit aufert, quae abstulit reddit, nec unquam tutius

[142] *Contr.* i, 8, 3. [143] *Suas.* i, 13. [144] *Contr.* ii, 5, 5.
[145] *Contr.* vii, 2, 11. [146] *Suas.* i, 3. [147] *Contr.* vii, 6, 2.
[148] *Contr.* v, 1, 4. [149] *Praef. Contr.* x, 9.
[150] Cf. Seneca, *Contr.* ii, 7, 1.
[151] Cf. *Contr.* ii, 1, 1; v, 1; cf. also Morawski, *De rhet. lat.*, pp. 8, 12 sq.
[152] *Contr.* i, 8, 3. [153] *Suas.* i, 3. [154] *Contr.* viii, 1, 2. [155] *Contr.* i, 2, 10.

est illam experiri quam cum locum iniuriae non habet";[156] the three hundred Laconians at Thermopylae say: "Electi sumus, non relicti."[157] The form of the declamations is characterized by the same artificiality as their subject-matter. In general it bears the stamp of the Silver Latinity,—a certain studied smoothness, correctness, and elegance, the confusion of prose and poetic diction, of which the author of the *Dialogus de Oratoribus* complains,[158] as if all attention should be given to the form instead of the substance,[159] a copious use of the apparatus of tropes and figures and especially of the antithesis.[160] Here again is a lack of *modus* and *iudicium*. So, for instance, in Seneca, Suas. vi, 5 on Mark Antony: "Quae Charybdis est tam vorax? Charybdim dixi, quae, si fuit, animal unum fuit; vix me dius fidius Oceanus tot res tamque diversas uno tempore absorbere potuisset"; or Contr. vii, 3, 8, the metaphors used by Muredius: "Abdicationes suas veneno diluit . . . mortem meam effudit."

c. *Influence of rhetoric on other branches of literature.*—Considering the important position accorded to the rhetorical schools and rhetoric itself in the mental life of the imperial epoch, it is not surprising that the school declamations affected the tone and style of other departments of literature. It should be remembered that in the rhetorical works of Seneca, the declamations bearing the name of Quintilian, and the fifty-one *Epitomae decem rhetorum minorum* of Calpurnius Flaccus, we have but a small remnant of those productions of the schools which were spread abroad in book form. There must have grown up a sort of "corpus declamationum" as a thesaurus for the benefit of aspirants to the art of speaking.[161] Moreover although the subjects discussed in

[156] *Contr.* v. 1. 1. [157] *Suas.* ii, 4.
[158] Cf. Tacitus, *Dialogus* c. 20: "Exigitur enim iam ab oratore etiam poeticus decor, non Accii aut Pacuvii veterno inquinatus, sed ex Horatii et Vergilii et Lucani sacrario prolatus"; Seneca, *Suas.* iii, 4: "Fuscus Arellius Vergilii versus voluit imitari"; Quintilian, *Inst. Orat.* ii, 4, 3: ". . . . arcessitis descriptionibus, in quas plerique imitatione poeticae licentiae ducuntur."
[159] Cf. Seneca, *Contr.* vii, 4, 70; ix, 2, 27.
[160] Cf. Persius, *Sat.* i, 85 sq. ". . . crimina rasis Librat in antithetis, doctus posuisse figuras Laudatur 'bellum hoc'!"
[161] This may be inferred from Seneca, *Praef. Contr.* i, 19; cf. also Hainmer, *Beitr. zu den 19 gr. quint. Decl.*, p. 9.

the schools were out of touch with actual life, the schools themselves influenced living men. Single sayings of the rhetoricians were widely promulgated and became a kind of ἔπεα πτερόεντα.[162] The mannerisms of the rhetoricians, with their confusion of prose and poetic diction, with their "*egressiones*" for the sake of variety, in splendid descriptions of men, cities, mountains, the sea, etc.,[163] crept especially into the historical works of the time.[164] It would seem that while in this epoch the various kinds of literature became mixed,—a characteristic of a nervous and unsettled period,—the line of demarcation between rhetoric and history was particularly effaced.[165] Among the poets the one most influenced by rhetoric was Ovid,[166] as Euripides among the Greeks. Persius at the age of sixteen became the pupil of the rhetor Cornutus and remained his devoted adherent for the rest of his life.[167] Lucan as a fellow-pupil of Persius, also surrendered himself to the fascinating influence of Cornutus,[168] and the *Pharsalia* affords many examples of epigrammatic power acquired in the rhetorical

[162] Cf. Seneca, *Suas.* ii, 10: "Recolo nihil fuisse me iuvene tam notum, quam has explicationes Fusci, quas nemo nostrum non alius alia inclinatione vocis velut sua quisque modulatione cantabat": Quintilian, *Inst. Orat.* viii, 3, 76: "Quae me iuvene ubique cantari solebant"; Tacitus, *Dialogus* c. 20: "Iuvenes . . . non solum audire sed etiam referre domum aliquod inlustre et dignum memoria volunt; traduntque invicem ac saepe in colonias ac provincias suas scribunt, sive sensus aliquis arguta et brevi sententia affulsit, sive locus exquisito et poetico cultu enituit"; cf also Morawski, *De rhet. lat.*, pp. 4 sq.

[163] Cf. Quintilian, *Inst. Orat.* iv, 3, 12.

[164] *Op. cit.* x, 2, 21: "Id quoque vitandum, in quo magna pars errat, ne in oratione poetas nobis et historicos, in illis operibus oratores at declamatores imitandos putemus. Sua cuique proposita lex, suus cuique decor est"; cf. also Lucian Πῶς δεῖ ἱστορίαν συγγράφειν, 15 sq. 27; Spengel, *Ueber das Studium*, etc., p. 28; Blass, *Die griech. Bereds.*, p. 146 sq.

[165] Cf. Seneca, *Suas.* v, 8: ". . . sententiam . . . dignam quae vel in oratione vel in historia ponatur"; Pliny, *Epist.* ii, 5: "Nam descriptiones locorum, quae in hoc libro frequentiores erunt, non historice tantum, sed paene poetice prosequi fas est"; Morawski in *Zeitschrift für die österreichischen Gymnasien* xliv (1881), pp. 97 sq.

[166] Cf. Seneca, *Contr.* ii, 2, 8: ". . . Latronis admirator fuit (sc. Ovid) . . . adeo autem studiose Latronem amavit ut multas illius sententias in versus suos transtulerit . . ."; cf. also Gruppe, *Quaest. Ann.*, pp. 36 sq.; Cucheval, *Hist. de l'éloq. rom.* i, pp. 288 sq.

[167] Cf. Persius, *Sat.* v, 22–65; Dio Cassius lxii, 29.

[168] Cf. Monceaux, *Les Africains*, p. 186; Quintilian, *Inst. Orat.* x, i, 90.

school.[169] The rhetor Septimus Severus had as his intimate friends the poets Statius and Martial; the former dedicated to Severus, *Silvae* iv, 5 (cf. l. 29–52), and the latter dedicated to him four of his epigrams.[170] The declamations had a no less marked influence upon the tragedies of the younger Seneca.[171] As the declamations contain among much chaff many precious grains, so was their influence on Latin literature not an unmixed evil. On this point the judgment of Bernhardy is as follows: "The weak as well as the brilliant points of the authors of that time have their final cause in the declamation; if on the one hand we are disturbed by their cut up, inflated and hasty manner, they on the other hand owe to rhetoric, which was developed to the extreme, an elasticity and keenness of thought which compensates for the shapelessness and tastelessness which are met with here and there."[172]

3. *The character and attainments of the rhetoricians.*

It has been stated already that after the emperors took the rhetorical schools under their protection, the social status of the rhetors became in a measure a respected and honored one. Rich men engaged rhetors to give exhibitions of the declamatory art for the entertainment of guests in their own houses.[173] At other times they delivered their discourses in schools, at their homes, or in public places such as basilicas and theaters. Rhetoricians were often the companions of prominent men: so Albucius Silus of Plancus,[174] Timagenes of Pollio.[175] What a colossal opinion of their own importance and that of their art the rhetoricians had, may be seen from Aper's exposition in Tacitus, *Dialogus* c. 5–7.[176] It may

[169] Cf. Lucan, *Pharsalia* iv, 185, 823.

[170] Cf. Monceaux, *l. c.*, p. 189 sq.

[171] Cf. Leo, *De Sen. trag. obs. crit.*, pp. 147 sq. Seneca's tragedies are "Declamationes ad tragoediae amussim deductas et in actus deductas."

[172] Cf. Bernhardy, *Grundriss der römischen Litteratur*, p. 282.

[173] Cf. Suetonius, *De vir. ill.* c. 7: "M. Antonius Grypho docuit primum in Divi Julii domo pueri adhuc, deinde in sua privata"; Gruppe, *Quaest. Ann.*, p. 27.

[174] Cf. Suetonius, *De rhet. clar.* c. 30.

[175] Cf. Seneca philos., *De Ira* iii, 23.

[176] Cf. for instance c. 7 end: "Quid? fama et laus cuius artis cum oratorum gloria comparanda est? Qui tam inlustres et in urbe . . . non solum apud negotiosos et rebus intentos sed etiam apud vacuos at adulescentes quibus modo recta indoles est et bona spes sui."

be safely asserted that the immoderate vanity, conceit, and rivalry of the rhetoricians, which led them to make a display of their skill and acumen an end in itself, or rather *the* end, and to adopt every expedient to draw attenton to it, was a leading cause of the perversion of oratory at that time. As might be expected of men who lived, moved and had their being in an unreal world and whose life-work was confined within the four walls of a school-room, the rhetoricians must have been as a rule unpractical and pedantic. As Koerber[177] remarks, this may have been implied in the name "scholasticus," which was given to them. Thus Seneca[178] says with reference to Bassus who endeavored in his declamations to imitate the force and earnestness of an orator of the forum: "Nihil est indecentius quam ubi scholasticus forum, quod non novit, imitatur. Amabam itaque Capitonem . . . . bona fide scholasticus erat."[179] And Seneca[180] relates that Albucius affected in his declamations, vulgarities and low expressions in order not to appear as a scholasticus. The rhetoricians took their task and the preparation for it very easily.[181] When originality was lacking they were content to appropriate the mental property of others, changing or omitting a word.[182] Still there were individual exceptions who were earnestly devoted to their art, and endeavored to cultivate and perfect it. So for instance Latro.[183] Moreover there was not an absolute lack of able men with sound judgment and clear insight, who made no secret of their opinion of the unwholesome character of the school declamations and the shortcomings of the rhetoricians. The crushing judgment of Cassius Severus[184] has been quoted already. Mon-

[177] *Ueber den Rhetor Seneca*, pp. 44 sq.

[178] *Praef. Contr.* x, 12.

[179] Cf. Tacitus, *Dialogus* c. 35: "At nunc adulescentuli nostri deducuntur in scaenam scholasticorum, qui rhetores vocantur"; Koerber, *Ueber den Rhet. Seneca*, p. 45, foot note 212: "In the same meaning Petronius in his first Satire employs the word 'impracticus,' *i. e.* 'scholasticus, qui in umbra sub tecto vitam agit,' according to an old glossary on Petronius."

[180] *Praef. Contr.* vii, 3 sq.

[181] Cf. Seneca, *Praef. Contr.* i, 10: "Quis est, qui memoriae studeat? Quis, qui non dico magnis virtutibus, sed suis placeat? Sententias a disertissimis viris iactas facile in tanta hominum desidia pro suis dicunt."

[182] Cf. Seneca, *Contr.* x, 5, 20: "Multi sunt, qui detracto verbo aut mutato aut adiecto putent se alienas sententias lucri fecisse."

[183] Cf. Seneca, *Praef. Contr.* i, 23.

[184] Cf. Seneca, *Praef. Contr.* iii, 12 sq.

tanus Votienus speaks in terms no less sharp of the vanity and want of conscientiousness of the rhetoricians.[185] To a certain degree they seem to have exercised a mutual criticism.[186] From the fact that the rhetoricians were allowed to harangue freely against tyranny, to exalt tyrannicide in the most glowing terms, and to kill off their imaginary tyrants to their heart's content, unmolested by the actual tyrants who were sitting on the throne,[187] it may be inferred that they were regarded as a harmless sort of people and that they exercised no influence whatever on the movements of political life. Reference has been made to the possibility that the emperors favored the rhetorical schools as a safety-valve for the lingering remnant of the old Roman love of liberty. Real life as it seems went on its course ignoring them as it was ignored by them. So likewise the dissensions of the various rhetorical sects[188] must have been a harmless matter, merely in the nature of personal attachments to individual masters, and not as in the warring philosophical schools, a difference of principles,[189] for the obvious reason that professionally the rhetoricians had no principles. It cannot, however, be too strongly emphasized that they could never have attained such a height of foolishness and such an absurd feeling of self-importance had they not been strongly supported by the public opinion of the times,[190] and the reason for this strong support has in it an

[185] *Ibid.*, *Praef. Contr.* ix, 1 sq.

[186] *Ibid.*, *Contr.* i, 2, 22; vii, 5, 7; ix, 6, 13; Koerber, *Ueber den Rhet. Sen.*, pp. 52 sq.

[187] Cf. Bonnell, *De mut. sub. prim. Caes. Eloq.*, p. 29.

[188] Cf. Quintilian, *Inst. Orat.* ii, 11, 2.

[189] Cf. Blass, *Die griech. Bereds.*, p. 157.

[190] Fronto, perhaps the most courted and flattered of all the rhetoricians, expresses on almost every page of his writings his fatuous consciousness that the whole universe has its eyes fixed upon him (cf. *Ad amicos*, i, 12); that nothing exists outside of rhetoric; that rhetoric is the queen of the world, and that Fronto is the king of rhetors. His sorrow and disappointment when his imperial pupil, Marcus Aurelius, turned from rhetoric to philosophy, are amusingly characteristic of the man (cf. Monceaux, *Les Africains*, pp. 215, 227 sq.). To explain such ridiculous vanity it is necessary to remember that the whole world then thought of Fronto what he thought of himself. He was compared by his contemporaries to the ancient Greek orators and to Cato, and pronounced their superior (cf. Monceaux, *ibid.*, pp. 221 sq.). So well did he understand the prevailing taste that for a long time cultivated Rome "Frontonized"; his age recognized and

element of pathos. The Roman, filled with the memory of the glory that had been,—the reality gone from his citizenship, from his oratory, and from his religion,—attributing to rhetoric an ethical power strong to help, turned to it as an end in itself,[191] his only link with the past, his only means of education for the present; clinging to it with a sort of despairing frenzy lest if sacred rhetoric should perish, with it should vanish from the world his only hope for the future. Only from this point of view can be comprehended rightly that intense devotion to an artificial thing,—a devotion which inevitably defeated its own purpose.

admired itself in his works (cf. Monceaux, *ibid.*, p. 239). Unfortunately for Fronto's reputation in modern times, the discovery of a portion of his writings in a palimpsest at the beginning of this century, has shown how exaggerated beyond his deserts was the estimate of his own age.

[191] Cf. Theo, *Progymnasmata* (Spengel, *Rhet. Graec.* ii, 60); "*καὶ μὴν ἡ διὰ χρείας γυμνασία οὐ μόνον, τινὰ δύναμιν λόγων ἐργάζεται, ἀλλὰ καὶ χρηστόν τι ἦθος ἐγγυμναζομένων ἡμῶν τοῖς τῶν σοφῶν ἀποφθέγμασιν*"; cf. also Jebb, *The Attic Orators* ii, p. 54.

PART II.

I.—Seneca the Elder.

1. *His life.*

For a long time it was the fate of the elder Seneca not only to be overshadowed by his greater son the philosopher, but to be entirely merged in him, so that his writings were attributed to his son and always combined with those of the latter. It was Raphael of Volaterra, who lived until the beginning of the sixteenth century, who first distinguished Seneca the Elder from Seneca the philosopher.[192] The confusion between father and son was fully cleared up later by Justus Lipsius.[193] To this amalgamation of the two is probably due the fact that the *praenomen* of the father is differently given. The MSS. have either L (Lucius) which is the praenomen of the philosopher, or omit it entirely, while the name of Marcus is first mentioned by Raphael Volaterra. This may have originated, as Koerber surmises,[194] from the fact that it was customary among the Romans to give children the praenomen of the grandfather, and as the children of Mela[195] and of Seneca the philosopher[196] bore the name of Marcus, it was assumed that this was the praenomen of the elder Seneca also.[197] The praenomen

[192] In his *Commentariorum urbanorum octo et triginta libri Anthropol.* l. 19 (Raphael Maffeius Volaterranus); cf. Antonius Hispalensis, *Bibliotheca Hispana vetus* i, 1.

[193] *Electorum liber* i (appeared in 1580).

[194] *Ueber den Rhetor Seneca*, p. 4.

[195] The poet M. Lucanus.

[196] Cf. Seneca philos., *Consol. ad Helv.* 18, 4.

[197] H. J. Müller, in the preface to his edition of Seneca Rhetor (Vindobonae MDCCCLXXXVII), p. viii, thinks it probable that father and son were confounded because they had the same praenomen. Wölfflin (*Rh. Mus.* l., (1895), p 320) assumes that the praenomen is Lucius on the ground that Quintilian, *Inst. Orat.* x, 1, 125, mentions the philosopher simply as Seneca, while *ibid.* 101, 114 he speaks of T. Livius and C. Caesar to distinguish the historian from the poet Livius, and the dictator from another Caesar, as also Varro Aticinus is cited by Priscian 10, 3, to distinguish him from M. Varro of Reate. Wölfflin argues that Quintilian would have marked the distinction of praenomen between the Senecas, father and son, had such a distinction existed. This argument does not seem very convincing as Quintilian is speaking only of philosophers, so that there was no possible ambiguity as to which Seneca he meant.

therefore must be regarded as uncertain. Seneca was born at Cordova in Spain.[198] His family was wealthy[199] and belonged to the equestrian order.[200] The date of his birth can be only approximately established by the combination of other data. Seneca himself says[201] that but for the civil war which kept him in his native province, he would have had the opportunity of hearing Cicero declaiming with the two great men who bore the toga praetexta. By these are to be understood Hirtius and Pansa who were consuls in 43 B. C.,[202] and Seneca must refer to this very year. The question of Seneca's age at this time depends on another, viz. at what age pupils usually entered the rhetorical schools. Koerber[203] assumes in consideration of the confusion of the courses of the grammatical and rhetorical schools mentioned above,[204] that boys entered the rhetorical schools at the early age of ten, and would accordingly fix the birth of Seneca in the year 53 B. C. But even granting that some boys may have come when ten years old under the training of the rhetoricians, it is not likely that one would be sent at that tender age from a distant province to the metropolis for the sake of study. It seems safer therefore not to fix upon any year as the certain date of birth but to leave it undecided between 60 and 53 B. C.[205] It is generally assumed that Seneca visited Rome twice.[206] As regards the date of his first coming, it would seem from the passage Praef. Contr. i, 11

[198] Cf. Seneca philos., *Epigr.*, ix (Ed. Haase): "Nunc longinqua tuum deplora, Corduba, vatem . . . Ille tuus quondam magnus tua gloria civis Infigar scopulo"; Seneca, *Praef. Contr.* i, 11: "Bellorum civilium furor . . . intra coloniam meam me continuit"; Martial, i, 61, 7: "Duosque Senecas unicumque Lucanum facunda loquitur Corduba."

[199] Cf. Seneca philos., *Cons. ad Helv.* 14, 2.

[200] Cf. Tacitus, *Annales* xiv, 53: "Egone, equestri et provinciali loco ortus proceribus civitatis adnumeror."

[201] *Praef. Contr.* i, 11.

[202] Cf. Suetonius, *De clar. rhet.* c. 1: "Cicero ad praeturam usque Graece declamavit; Latine vero senior quoque, et quidem consulibus Hirtio et Pansa, quos discipulos et grandes praetextatos vocabat"; cf. also Cicero, *Ad Fam.* vii, 33, 1; ix, 16, 7.

[203] *Ueber den Rhet. Seneca*, p. 3. [204] Page 17.

[205] Cf. Clinton, *Fasti Hellenici* iii, p. 261, 2d edition, who adopts 61 B. C. as the date of Seneca's birth.

[206] Cf. Seneca, *Praef. Contr.* iv, 3: "Audivi autem illum (sc. Asinium Pollionem) et viridem et postea iam senem." This passage, quoted by Koerber (*Ueber den Rhet. Seneca*, p. 4) in support of this assumption, does not seem at all decisive.

quoted in Note 198, that he left Cordova soon after the death of Cicero. This date is also supported by two other passages of the same preface §§ 13 and 24, in which Seneca relates that he lived in close friendship with Porcius Latro from early boyhood ("a prima pueritia"), and that he heard him recite his first Controversia while still a youth ("admodum iuvenem") in the school of Marullus where he was himself a student.[207] On the other hand the civil wars which prevented him from going to Rome during Cicero's lifetime, did not cease before 29 B. C.[208] How long Seneca remained in Rome on his first visit is not known. We may assume that he staid there long enough to complete his rhetorical education.[209] Returning to Cordova he married Helvia who belonged to an old conservative family and who seems personally to have been a woman of no common parts.[210] By this marriage there were three sons: Novatus, who was adopted by the rhetor L. Junius Gallio, Lucius Seneca the philosopher, and Mela the father of the poet Lucan.[211] The latest possible date of Seneca's second coming to Rome is 4 A. D. For Asinius Pollio, of whom he says:[212] "Audivi illum et viridem et postea iam senem" (on which words, especially postea, Koerber and Gruppe base their theory of a double visit) died 5 A. D. And at least five years later Seneca must have been still at Rome.[213] The date of Seneca's death can be ascertained only approximately. On the one hand it is certain that he was still alive in 34 A. D. For in Suas. ii, 22 he speaks of the accusation raised against Scaurus Mamercus by Fuscus, and the extinction of the Scaurus family in the person of this Mamercus. This accusation was made in 32 A. D.,[214] and two

[207] Cf. Koerber, *Ueber den Rhet. Sen.*, p. 5; Gruppe, *Quaest. Ann.*, p. 25.

[208] Cf. Baumm, *De rhet. Graec. a Seneca in Suas. et Contr. adhib.*, p. 12. Baumm assumes this date for Seneca's first coming to Rome and offers the explanation that the youthful recitation of Latro and the teaching of Marullus occurred in Cordova.

[209] Cf. Koerber, *Ueber den Rhet. Sen.*, p. 6; Gruppe, *Quaest. Ann.*, p. 25. Gruppe assumes that he did not leave Rome before 16 B. C.

[210] Cf. Seneca philos., *Consol. ad Helv.*, passim, especially xiv sq.

[211] They are introduced in this order in the prefaces to the Controversiae, except in that to book ix, where Lucius is wanting.

[212] *Praef. Contr.* iv, 3.

[213] Cf. Seneca, *Contr.* i, 3, 10, where he mentions "Varus Quintilius tunc Germanici gener ut praetextatus"; Gruppe, *Quaest. Ann.*, pp. 25 sq.

[214] Cf. Tacitus, *Annales* vi, c. 9: "Appius Silanus Scauro Mamerco simul ac Sabino Calvisio maiestatis postulantur" (under Tiberius).

years after, another accusation induced Mamercus to commit suicide, by which, as Seneca says, his family became extinct.[215] On the other hand Seneca did not survive the banishment of his son Lucius, which took place in 41 A. D.,[216] and accordingly the date of his death is to be set between 34 and 41 A. D. These limits may be narrowed if Suetonius's account of the death of Tiberius is an extract from Seneca's lost historical work, the existence of which is attested by Seneca the philosopher.[217] The passage of Suetonius[218] reads: "Seneca eum (sc. Tiberium) scribit, intellecta defectione exempturum annulum quasi alicui traditurum parumper tenuisse, dein rursus aptasse digito et compressa sinistra manu iacuisse diu immobilem, subitoque vocatis ministris ac nemine respondente consurrexisse nec procul a lectulo deficientibus viribus concidisse." In this case Seneca would at least have survived Tiberius who died 37 A. D.[219]

2. *His character.*

The character of Seneca is reflected especially in the prefaces to the single books of the Controversiae, in which he writes in an unaffected epistolary style as a father to his children, in a tone which bears the stamp of sincerity and conviction. We recognize a man of the old sterling, almost severe Roman, character after the pattern of M. Porcius Cato, of whom he was a great admirer.[220]

[215] Cf. Tacitus, *ibid.* c, 29: "Mamercus dein Scaurus rursum postulatur ... ab Servilio et Cornelio accusatoribus adulterium Liviae, magorum sacra obiectabantur. Scaurus, ut dignum veteribus Aemiliis, damnationem anteit, hortante Sextia uxore, quae incitamentum mortis et particeps fuit."

[216] This follows from the passages in *Cons. ad Helv.* ii, 4 sq.: "Carissimum virum, ex quo mater trium liberorum eras, extulisti. Lugenti tibi luctus nuntiatus est omnibus quidem absentibus liberis, quasi de industria in id tempus coniectis malis tuis, ut nihil esset ubi se dolor tuus reclinaret. Transeo tot pericula, tot metus, quos sine intervallo in te incursantes, pertulisti; modo in eundem sinum, ex quo tres nepotes emiseras, ossa trium nepotum recepisti. Intra vicesimum diem, quam filium meum in manibus et in osculis tuis mortuum funeraveras, raptum me audisti; hoc adhuc defuerat tibi lugere vivos."

[217] Cf. Fragm. 98.

[218] *Tiber.* c. 73.

[219] Cf. on this question Niebuhr, M. Tull. Cic. orat. pro M. Font. et pro Rab. fragm.; T. Liv. Lib. xci fragm. plen. et. emend.; L. Sen. fragm. ex membr. Bibl. Vat., p. 104; Koerber, *Ueber den Rhet. Sen.*, pp. 8–10; Teuffel, *Hist. of Rom. Lit.* § 269. 5.

[220] Cf. *Praef. Contr.* i, 9.

He passes a censure[221] upon the corruption and laxity of the times, to which there are numerous allusions in the Controversiae,[222] and probably goes too far and exaggerates, as is usually the case with the *laudator temporis acti.* Seneca indeed exhibits some traces of the *rigor antiquus.*[223] He disapproved of the higher education of women, "propter istas quae litteris non ad sapientiam utuntur, sed ad luxuriam instruuntur." In his earlier years he took part in political life and was not indifferent to political ambitions and honors; but later he regarded political life as beset with dangers compared with which the life of a scholar afforded a safe harbor but little exposed to the storms of fate.[224] As far as we know even as a scholar his activity was confined to writing, for although it is certain that he passed much of his time in the rhetorical schools, where alone he could have acquired his vast knowledge of contemporary rhetoric, there is nothing whatever to show that he took any active part in them or that he has the slightest claim to the title of rhetor which has been given him. Seneca shows himself again as an old Roman of the Catonian type in his unconcealed antipathy to the Greek rhetoricians and Greek culture in general. In fact he overlooks no opportunity of giving the Greeks a rebuke; compare for instance Praef. Contr. i, 6: "insolens Graecia"; Contr. x, 4, 23: "Graecas sententias in hoc refero, ut possitis aestimare, primum quam facilis e Graeca eloquentia in Latinum transitus sit et quam omne, quod bene dici potest, commune omnibus gentibus sit, deinde ut ingenia ingeniis conferatis et cogitetis Latinum linguam facultatis non minus habere, licentiae minus"; compare besides: Contr. i, 6, 12; i, 7, 12; i, 8, 7; ii, 6, 12, ix, 2, 29. Still his sense of justice occasionally compels him to accord praise to the Greeks, as in Contr. x, 4, 18, but even this he usually qualifies with a "nescio an" when the Greeks have the advantage in a comparison with the Roman rhetoricians as in Contr. i, 4, 10 and 12.[225] As regards Seneca's attitude toward

[221] Cf. *Praef. Contr.* i, 2, 8 sq. 23.

[222] Cf. i, 7, 5; ii, 4, 10; x, 4, 17 sq.

[223] Thus *Contr.* iv, 6 he considers it a weakness ("imbecillus animus") in Haterius who had lost six sons, to burst into tears in the midst of a discourse which recalled his loss; cf. also Sen., *Consol. ad Helv.* xvii, 3: "Patris mei antiquus rigor ... Virorum optimus, pater meus, maiorum consuetudini deditus."

[224] Cf. *Praef. Contr.* ii, 3 sq.

[225] Cf. Buschmann, *Character der griechischen Rhetoren beim Rhetor Seneca*, pp. 1, 2; Koerber, *Ueber den Rhet. Sen.*, pp. 63 sq.

the political conditions of his time, it may be said that he was on the whole reconciled to the change from the confusion and unrest of the later period of the Republic to the imperial rule, although the love of liberty, especially so far as it concerned the freedom of the scientific spirit, was still alive in his breast. He is in complete sympathy with Augustus whom he terms a "clementissimus vir,"[226] and praises for allowing to a certain extent freedom of speech.[227] But he is fully aroused to ire by the literary *auto-da-fés* of his time.[228] He has, however, no sympathy for those foolhardy persons who would rather risk their heads than forego some seditious saying.[229]

3. *His writings.*

The rhetorical writings of Seneca which have survived under the title "Oratorum et rhetorum sententiae, divisiones, colores," consist of one book of Suasoriae and ten books of Controversiae.[230] The first contains seven themes, of which the beginning is incomplete, and Bonnell is perhaps right in thinking that they represent only a small remnant of the original number of Suasoriae, possibly not even the whole of the first book.[231] Of the ten books of Controversiae, only five, viz. i, ii, vii, ix and x, have the declamations, thirty-five in number, in full, although even these exhibit many lacunae.[232] Of the thirty-nine Controversiae of the other books, viz. iii, iv, v, vi and viii, there are in existence only the

[226] *Praef. Contr.* iv, 5.

[227] Cf. *Contr.* ii, 4, 5: "Tanta autem sub divo Augusto libertas fuit, ut praepotenti tunc M. Agrippae non defuerint qui ignobilitatem exprobrarent." It was by no means an excessive freedom of speech which Augustus left to the proud Romans.

[228] Cf. *Praef. Contr.* x, 6, where he says of the burning of the writings of Labienus: "Bono hercules publico ista in poenas ingeniorum versa crudelitas post Ciceronem inventa est"; § 7: "Facem studiis subdere, et in monumenta disciplinarum animadvertere quanta et quam non contenta cetera materia saevitia est."

[229] Cf. *Contr.* ii, 4, 13: "... sed horum non possum misereri, qui tanti putant caput potius quam dictum perdere."

[230] That the division of the Controversiae into books originated with Seneca himself, is shown by the fact that each book is introduced by a preface.

[231] Cf. Bonnell, *De mut. sub. prim. Caes. eloq.*, p. 22: "Videtur autem, quae ad nos pervenerunt septem (sc. Suasoriae) exigua tantum pars a Senecae libris mandatum fuisse, fortasse ne primus quidem liber integer, quo certe numero antiquissima Suasoriarum editio Veneta inscribitur."

[232] The ignorance of the copyist played special havoc in transcribing the dicta of the Greek rhetoricians; cf. Buschmann, *Char. der griech. Rhet. beim Rhet. Seneca*, p. 3.

Excerpts.[233] In this loss it is some consolation that the valuable prefaces to books iii and iv have been preserved. In regard to the date of composition of the writings we know that Seneca produced them in extreme old age.[234] For a more precise date the same points come under consideration which were discussed concerning the date of his death, *i. e.* they must have been written between 34 and 41 A. D. Schanz[235] would limit this interval to the first years of Caligula's reign, because, he thinks, during the reign of Tiberius, Seneca would not have dared to quote in Suas. vii, 19 from the book of Cremutius Cordus, which had been officially burned, in a work which was intended not only for his sons but for the public. Schanz quotes Praef. Contr. i, 10: "Quaecunque a celeberrimis viris facunde dicta teneo, ne ad quemquam privatim pertineant, populo dedicabo." But this is not at all conclusive. Seneca may have intended his rhetorical writings, which he composed in the first place at the request and for the benefit of his sons, for the general public, yet not have delivered them to the public during his lifetime, but entrusted this matter to his sons, so as not to come into conflict with the tyrannical Tiberius even if he censured him in his book.[236] The Controversiae were com-

[233] Cf. Bursian in the Preface to his edition of Seneca, p. vii sq., concerning the date of origin and the value of the Excerpts: "Controversiarum libros magna fuisse etiam apud posteriores aevi homines auctoritate ex eo colligere liceat, quod saeculo fere quarto vel quinto p. Chr. n. extitit qui illas ad scholarum, ut mihi videtur, usus in epitomen redegerit, praefationes autem sive epistulas ad filios datas, quas Seneca singulis libris praemiserat integras in hanc exerptorum collectionem transtulerit, exceptis praefationibus libri quinti, sexti, octavi, et noni, quas cur omiserit rationem reddere non possumus. Epitimator autem quisquis fuit in negotio suo exsequendo nec satis perite nec satis diligenter est versatus; nam, ut omittam quod plurima ex arbitrio suo immutavit, haud raro sententias tam arte cum aliis connexas ut sine damno ab illis divelli non possent, nexu exsolutas ita posuit ut legentibus nobis ineptae omnique sensu destitutae videantur ... Quin etiam est ubi sententias a Seneca positas, quia non intellexerat prorsus corruperit"; cf. Konitzer, *Quaest. in Sen. patr. crit.*, p. 12; H. J. Müller in the Preface to his edition of Seneca, p. xxii.

[234] Cf. Seneca, *Praef. Contr.* i, 2: "Sed cum multa iam mihi ex meis desideranda senectus fecerit, oculorum aciem retuderit, aurium sensum hebetaverit, nervorum firmitatem fatigaverit ..."

[235] *Geschichte der römischen Litteratur* ii, p. 200; cf. also Bursian in the Preface to his edition of Seneca, p. vii.

[236] That he entrusted some works to his son Seneca the philosopher, for publication, follows from the passage of Seneca philosopher, fragm. 98 (ed. Haase iii, p. 436); cf. Koerber, *Ueber den Rhet. Sen.*, pp. 9 sq.

posed before the Suasoriae.[237] The primary reason of Seneca's writing his rhetorical works was the request of his sons who desired to become acquainted with the sayings of the rhetoricians in order to form an independent judgment on them.[238] At the same time the work was intended for the general public eventually.[239] Still a third motive was to rescue some of the prominent rhetoricians from oblivion or from what is worse, misrepresentation.[240]

Besides the Suasoriae and Controversiae, Seneca composed an historical work on the period from the beginning of the civil wars down to his own time, and, as it would seem, some other works which have been lost. This would follow from what his son says in fragm. 98: "Si quaecunque composuit pater meus et edi voluit, iam in manus populi emisissem, ad claritatem nominis sui satis sibi ipse prospexerat: nam nisi me decipit pietas, cuius hon-

[237] Cf. Seneca, *Contr.* ii, 4, 8: "Quae dixerit (sc. Latro) suo loco reddam cum ad suasorias venero." This passage confirms the opinion that the Suasoriae extant do not represent all which were edited by Seneca as he would scarcely have failed to reproduce this long Suasoria of his beloved Latro. In the MSS. and most of the editions the Suasoriae are placed before the Controversiae in accordance with the gradation adopted for instruction in the rhetorical schools, where the Suasoriae being easier came first. Cf. Schott in his Preface, p. 7: "Etsi non me fugit Controversias prius edidisse M. Annaeum quam Suasorias, has enim Controversia xii promittit, tamen feci libenter ut has illis ordine anteponerem, cum tradendarum artium Methodo, quae perfaciliora notaque, ad ea quae difficilia magis, obscura atque ignota sunt, viam sternit, tum priorum editionum exemplo Frobinii, etc." Cf. Teuffel, *Hist. of Rom. Lit.* § 269, 7; H. J. Müller (Preface, p. viii) thinks it might be concluded from the circumstance that the end of the Controversiae and the beginning of the Suasoriae are wanting, that in the older MSS. now lost, the Suasoriae were preceded by the Controversiae. The lacuna could thus be easily explained by the loss of several leaves or an entire quaternion. But if the Suasoriae preceded the Controversiae this lacuna may be easily accounted for in another way, viz. the beginning and end of a book are the first to suffer all kinds of vicissitudes.

[238] Cf. *Praef. Contr.* i, 1: "Jubetis . . . ab illis (sc. declamatoribus) dicta colligere, ut, quamvis notitiae vestrae subducti sint, tamen non credatis tantum de illis, sed et iudicetis."

[239] Cf. *Ibid.* § 10.

[240] Cf. *Ibid.* § 11: "Ipsis quoque multum praestaturus videor, quibus oblivio imminet, nisi aliquid quo memoria eorum producatur, posteris traditur. Fere enim aut nulli commentarii maximorum declamatorum extant aut, quod peius est, falsi. Itaque ne aut ignoti sint aut aliter quam debent noti, summa cum fide suum cuique reddam."

estas etiam error est, inter eos haberetur, qui ingenio meruerunt ut puris scriptorum titulis nobiles essent. Quisquis legisset eius historias ab initio bellorum civilium, unde primum veritas retro obiit, paene usque ad mortis suae diem, magni aestimaret scire, quibus natus esset parentibus ille, qui res Romanas. . . ." Whether the "quaecunque" refers to works besides the history, and whether these works were independent treatises on rhetoric as Koerber[241] surmises, is, although very likely, not certain. Nor does the passage seem conclusive which is quoted by Quintilian from a Controversia of Seneca to support the view that Seneca published declamations of his own. For Koerber's arguments[242] to prove that this passage is not from one of the Controversiae, *i. e.* which Seneca merely collected and which were afterward lost, are not decisive. The tone and tenor of the passage in question are entirely in keeping with the style of the Controversiae which we find in the collection of Seneca,[243] and the theme is in a degree parallel to that of Contr. vi, 7.

4. *Value of his rhetorical writings.*

The rhetorical writings are the richest and most trustworthy source of our information on the methods and condition of the study of rhetoric, and since rhetoric, as has been said above, comprised the whole of what we term a liberal education, we may add of the pursuit of liberal studies and general culture in the ages of Augustus and Tiberius. It is true, they do not convey an adequate picture of the schools of that time; the individual declamation is not presented as it was delivered and discussed in some definite place and at a definite time, but solely with regard to its contents. For since most of the themes were stereotyped and in vogue in various schools, Seneca reproduced what he has heard on each of them in several places and on several occasions.[244]

[241] *Ueber den Rhet. Sen.*, p. 22. [242] *Loc. cit.*

[243] Cf. Quintilian, *Inst. Orat.* ix, 2, 42: "Novi vero et praecipue declamatores audacius nec mehercule sine motu quodam imaginantur; ut Seneca ista in controversia, cuius summa est, quod pater filium et novercam inducente altero filio in adulterio deprehensos occidit: Duc, sequor; accipe hanc senilem manum et quocunque vis imprime. Et post paulo, Aspice, inquit, quod diu non credidisti. Ego vero non video, nox oboritur et crassa caligo."

[244] Cf. *Suas.* ii, 11: "Non quidem in hac suasoria, sed in hac materia dissertissima illa fertur sententia Dorionis"; *ibid.* 12: "Occurrit mihi sensus in eiusmodi materia a Severo Cornelio dictus"; cf. also *Contr.* i, 2, 22.

Still we have the personal observations and experiences of a man devoted to the subject in question, who, notwithstanding he was in the noise and clamor of the schools, preserved a clear insight and a sober judgment. This he shows amply in the prefaces to the various books of the Controversiae and his personal remarks interspersed throughout the declamations. The prefaces are the most readable portions of the work and not only are most important for a knowledge of the life and character of Seneca himself, but also contain the most direct information concerning the state of literary taste and education as well as the life, methods, and manners of the prominent rhetors. The style of the prefaces shows few traces of the influence of Silver Latinity and is not inelegant.[245] Seneca imitated Cicero, whom he admired so much,[246] not without success. The style of the prefaces is marked by clearness, precision, purity of expression, and a regular and perspicuous periodic structure. In the declamations the influence of the Silver Latin is predominant. The question arises, to whom are the diction and style of these (the Controversiae and Suasoriae) to be attributed? Have we in them a faithful reproduction in form and contents of the sayings of each rhetorician to whom they are ascribed; or did Seneca freely give the thoughts of the rhetors his own form? This latter view is adopted by Teuffel.[247] But the difference between the language of the prefaces and that of the declamations, and also in the manner of expression of the different rhetoricians, is so marked that it would seem that Seneca endeavored also to reproduce the peculiarities of the style of the individual rhetors. This is the view adopted by M. Sander[248] and H. T. Karsten.[249] They regard the wording of the declamations as an attempt on the part of Seneca to reproduce the varying styles of the different speakers, and appeal to the fact that Seneca had no other sources for his work than his memory which, good as it was, could not be expected to be absolutely faithful as regards the details of the mode of expression. They

[245] Cf. Schott, *De auct. et decl. rat.*, p. 5. "De cuius scriptoris stylo ita iudicare non dubitem, nihil esse in lingua Latina, cum a Cicerone Fabioque discesseris, scripto purius et elegantius."

[246] Cf. *Praef. Contr.* i, 7, 11; *Suas.* vi, 14 sq.

[247] *Hist. of Rom. Lit.* § 269. 6.

[248] *Quaest. in Sen. rhet. synt.*, p. 4 sq.; *Der Sprachgebrauch des Rhet. Ann. Sen.* i, p. 1 sq.

[249] *De eloc. rhet. qual. inven. in Ann. Sen. suas. et contr.*, pp. 9 sq.

remind us, however, that Seneca refers with pride to the prodigious power of his memory, which bordered on the miraculous.[250] Besides, as Karsten observes, it is not at all impossible that Seneca assisted his memory by consulting the various collections of declamations in current use, to the existence of which he often refers.[251] Does it not seem altogether probable that Seneca had also notes taken by himself while listening to the declamations? Many of the epigrammatic phrases scattered throughout his work are so good that it seems as if they must be in the exact words of the speakers who uttered them. Sander and Karsten remind us that the characteristics of the style of the different rhetoricians, as given by Seneca in the prefaces, are really verified by the sayings quoted from them afterwards. It is shown that the style of the individual rhetoricians as represented in Seneca's work, differs not only in a general way but also in some definite details.[252] Still it seems necessary to assume that the stylistic peculiarities of the individual rhetors are somewhat effaced, as even a most phenomenal memory, assisted by notes, would scarcely be able to reproduce in all their details, discourses delivered many years previously.[253] Moreover we must not regard the reports of Seneca as a reproduction in full of the speeches delivered in the

[250] Cf. *Praef. Contr.* i, 2 sq.: "Hanc (sc. memoriam) aliquando adeo in me floruisse, ut non tantum ad usum sufficeret sed in miraculum usque procederet, non nego; nam et duo milia nominum recitata quo erant ordine dicta reddebam et ab his, qui ad audiendum praeceptorem mecum convenerant, singulos versus a singulis datos, cum plures quam ducenti efficerentur ab ultimo incipiens usque ad primum recitabam. Nec ad complectenda tantum quae vellem velox mihi erat memoria, sed etiam ad continenda quae acceperat solebat bonae fidei esse." That Seneca does not exaggerate is evident from the tone of simplicity (cf. *ibid.* 19) in which he speaks of the acquirement of a good memory as something easy, and mentions several cases as Hortensius and the legate of Pyrrhus. For other instances of men endowed with an extraordinary memory cf. Schott, *De auct. et decl. rat.*, p. 1; so that there is no reason for disbelieving Seneca's description of his own.

[251] Cf. *Praef. Contr.* i, 11; iii, 3. 15; iv, 2; *Contr.* ix, 6, 18; *Praef. Contr.* x, 3. 8 and 12.

[252] Thus for instance "idcirco," which occurs in the sayings of Latro, is never used by Seneca himself, while the other rhetoricians use in its stead "ob hoc, ob id, etc."; cf. Sander, *Quaest. in Sen. rhet. synt.*, pp. 5 sq.

[253] Cf. *Benhardy, Grundr. der röm. Litt.*, p. 792: "Die Form ziemlich dasselbe subjective Gepräge des Erzählers trägt"; Koerber, *Ueber den Rhet. Sen.*, pp. 19 sq.

schools; much is written in a compressed and abrupt manner, bearing out the theory of note-taking suggested above; some of it seems like portions of a table of contents. All this is not to be overlooked in judging the style of the individual rhetors and may account for many apparently cramped and artificial sentences.[254] In fact, Seneca neither intends nor pretends to be an objective narrator of what had been going on in the schools. In the third part of the Controversiae (the *colores*) and the second part of the Suasoriae (the *divisio*), he especially indulges in digressions and *ex parte* remarks of all kinds. Now he addresses his sons, calling their attention to certain circumstances or recalling something said before.[255] Now he volunteers his judgment on some saying of a rhetor or discusses some passage from a poet, which is but loosely connected with the scholastic subject in hand. Most of all he delights in reminiscences and anecdotes concerning the rhetoricians and others.[256] Occasionally even a jest is ventured upon.[257] If all this interferes with the objectivity of Seneca's narration, and confirms the opinion expressed above that we find in the Controversiae and Suasoriae but an inadequate picture of the life and action of the rhetorical schools, still we may assert that Seneca was a subjective writer with a very powerful memory which enabled him to reproduce the characteristics of the different rhetors, and this intermingles something of life, fresh and warm, with the cold subtleties and casuistries of the main body of the work.

5. *His attitude toward rhetoric and the rhetoricians.*

Seneca approached the work of recording his reminiscences of life in the schools with much cheerfulness and pleasure[258] and is most enthusiastic about the art and study of rhetoric, which in his opinion is the noblest of all pursuits[259] and the means of

[254] Seneca sometimes states explicitly that he has omitted certain passages of the discourses, and gives a brief hint of the omitted portion, cf. *Contr.* i, 8, 10: "Hic exempta"; ii, 6, 25: "Hic vitiorum exprobatio"; vii, 6, 13: "Deinde de animo servi," etc.

[255] Cf. *Contr.* vii, 1, 27; *Suas.* i, 16; ii, 10.

[256] Cf. *Contr.* ii, 2, 12; ii, 4, 11; vii, 3, 9; vii, 4, 6; *Suas.* iii, 5 sq.

[257] Cf. *Contr.* x, 5, 28.

[258] Cf. *Praef. Contr.* i, 1: "Exigitis rem magis iucundam mihi quam facile . . . iucundum mihi redire in antiqua studia melioresque ad annos respicere."

[259] Cf. *Praef. Contr.* ii, 5: "pulcherrima disciplina."

entrance to all liberal culture.[260] But he is not a blind devotee to any and every kind of rhetoric. He complains bitterly of the condition of the art in his own time[261] and distinguishes the declamatio from the "solidum scripti genus."[262] In several passages in the prefaces he lays down rules on the art of rhetoric: the student should acquaint himself with several models: "Quo plura exempla inspecta sunt, plus in eloquentiam proficitur. Non est unus, quamvis praecipuus sit, imitandus, quia nunquam par fit imitator auctori . . . ."[263] The endeavor to imitate deprives one of firmness of judgment: "Hoc illi (sc. Albucio) accedebat inconstantia iudicii: quem proxime dicentem commode audiebat imitari volebat."[264] Subtlety of thought must be concealed in order to be effective.[265] He condemns severely the use of sordid and obscene expressions.[266] The style should have vigor without straining for elaborate and exaggerated effects.[267] The fulness of expression should not be overloaded.[268] The discussion should be clear and simple, but solid.[269] The argumentation should be neither clumsy nor involved.[270] As a sum total of the qualities of a good speaker, according to Seneca's view, may be added his characterization of Cassius Severus: "Omnia ergo habebat, quae illum, ut breve declamaret, instruerent: phrasin non vulgarem nec sordidam, sed electam, genus dicendi non remissum aut languidum, sed ardens et concitatum, non lentas nec vacuas explicationes, sed plus sensuum quam verborum habentes, diligentiam, maximum etiam mediocris ingenii subsidium."[271] Seneca's comments and criticisms, embodying his views and principles in detail, are interspersed among the sayings of the individual rhetors, over some of whom he grows quite enthusiastic, as for instance Latro,[272] and Crassus Severus.[273] Others are pointed out in contradiction to these worthy exponents of their art, as being conspicuous for stupidity and absurdity.[274] Still all are dealt with fairly and no

[260] Cf. *Ibid.*, 3: "Facilis ab hac (sc. eloquentia) in omnes artes discursus est; instruit etiam quos non sibi exercet."

[261] Cf. *Praef. Contr.* i, 6 sq.; *Praef. Contr.* iii, 1; *Praef. Contr.* x, 12.

[262] Cf. *Contr.* i, 8, 16; *Suas.* vi, 16.

[263] *Praef. Contr.* i, 6. [264] *Praef. Contr.* vii, 4. [265] Cf. *Praef. Contr.* i, 21.

[266] Cf. *Contr.* i, 2, 22 sq.; *Praef. Contr.* iii, 7; *Praef. Contr.* vii, 3 sq.

[267] Cf. *Praef. Contr.* ii, 1; *Praef. Contr.* iv, 7; *Contr.* ix, 2, 28.

[268] Cf. *Praef. Contr.* ii, 1. [269] Cf. *Praef. Contr.* iii, 7.

[270] Cf. *Praef. Contr.* vii, 1 [271] *Praef. Contr.* iii, 7.

[272] Cf. *Praef. Contr.* i, 13 sq. [273] Cf. *Praef. Contr.* iii, 1 sq.

[274] Cf. on this point Buschmann's interesting essay: *Die "enfants terribles" unter den Rhetoren des Seneca.*

good point is left unnoticed; a felicitous expression receives praise even if it be senseless; a good thought even if it be poorly expressed. It is true that in Seneca's criticisms censure predominates over praise. He does not mince matters; epithets like "insanus, stultus, puerilis, ineptus, furiosus," are frequent; there is no lack of biting sarcasm: "Antonius Atticus inter has pueriles sententias videtur palmam meruisse";[275] "Corvo rhetori testimonium stuporis reddendum est";[276] "Sparsum hoc colore declamasse memini, hominem inter scholasticos sanum, inter sanos scholasticum."[277] On Seneca's attitude toward the Greek rhetoricians we have already spoken. He was by no means, however, a petty, morose pedant and scold; he is thoroughly genial and has no idea of putting the fetters of rigid rules upon rhetoric: "Nec sum ex iudicibus severissimis, qui omnia ad exactam regulam derigam: multa donanda ingeniis puto; sed donanda vitia non portenta sunt."[278] And what some of the rhetors accomplished in absurdity and perversion of truth and good taste was "portentous" indeed. To hear or read these puerilities was a different thing from slowly and carefully writing them down,—a task to try the patience even of so grave and dignified a man as Seneca shows himself to have been. This same Seneca who, yielding to the request of his sons, undertook the task with pleasure and enthusiasm, expresses toward the end utter weariness and disgust: "Fateor vobis," he addresses his sons, "iam res taedio est. Primo adsilui velut optimam vitae meae partem mihi reducturus: deinde iam me pudet tamquam diu non seriam rem agam."[279]

If an estimate of Seneca's mental attainments is to be drawn from his extant rhetorical writings, it may be said that there is nothing in them to show a man of extraordinary capacity. The finesse and acumen of Dionysius Halicarnassus or Quintilian are lacking in him. Still his judgment, if not always fine, is sound. This is the more admirable when we consider that he passed a great portion of his time while at Rome in an artificial and narrowing sphere. His style by its clearness and simplicity reminds us of the golden age of Latin diction. His place in Latin literature is that of the standard authority on the spirit and tendency of the art of rhetoric at the beginning of the imperial régime.

[275] *Suas.* ii, 16. [276] *Ibid.* 21. [277] *Contr.* i, 7, 15. [278] *Praef. Contr.* x, 10.
[279] *Praef. Contr.* x, 1; cf. Koerber, *Ueber den Rhet. Sen.*, pp. 59 sq.

II.—Manuscripts and Editions.

A full description of the various MSS. and editions is given by H. J. Müller in the Preface to his edition (1887) of the elder Seneca. The leading facts are briefly summarized below.

1. *Manuscripts.*

The MSS. of Seneca's writings divide themselves into two classes,—1st, those of the original work of Seneca as far as it is extant, *i. e.* the Controversiae Books i, ii, vii, ix and x exclusive of the Prefaces to books i and ii, and the seven Suasoriae; 2nd, those containing the Excerpts of books i, ii, iii, iv, vii and x.

1st MSS. of the Controversiae and Suasoriae.—1. Codex Antverpiensis (A), parchment, 10th century, corrected probably in 16th. Lacunae in Contr. ii, 5; ix, 2; Suas. ii, 7.

2. Codex Bruxellensis (B), formerly Cusanus, parchment, 10th century, corrected in 16th. Lacuna in Contr. x, 5. Written by two hands.

3. Codex Vaticanus (V), parchment, written toward the end of the 10th century and shortly afterward corrected by another hand, again slightly worked over in the 15th century.

All three of these codices show by their agreement in many corrections and omissions, as well as in the manner of writing the Greek words, that they go back to a common archetype (C), but they were derived from two different copies of it: viz. A and B, which are closely akin to one another, from one, and V from the other.

As regards the critical value of A, B and V, A and B are more faithful to the archetype and therefore of greater authority, while V is characterized by many interpolations of a talented and learned emendator. Bursian gives B the preference over A,[280] while H. J. Müller and Konitzer[281] and Kiessling[282] accord equal merit to both. The corrections of A and B came mostly from editions and have therefore no other critical value than that of conjectures.

[280] Cf. Bursian's edition, Preface, p. x: "Nihil tamen isti scribae ex arbitrio suo mutaverunt, ita ut codex quamvis corruptissimus ubique tamen veri vestigia nulla interpolatione obscurata nobis offerat quibus solis insistendum est ei qui auctoris verbis et recensendis et emendandis pristinum suum splendorem his libris reddere conatur."
[281] *Quaest. in Sen. patr. crit.*, pp. 4 sq.
[282] *Beitr. zur Texteskrit. des Rhet. Sen.*, p. 32.

4. Codex Toletanus or Covarruvianus (T), parchment, copied from V in the 13th century and corrected probably in the 16th.

5. Codex Brugensis (Bv), parchment, copied from T in the 15th century before it was corrected. Both T and Bv are therefore for critical purposes to a great extent superseded by V, from which they are directly or indirectly derived.

6. Codex Vaticanus (v), parchment, 15th century, very small characters.

7. Codex Bruxellensis (D), paper, 15th century, with all the Greek omitted, a blank space being left for it. Corrected by two hands in the same century. It contains the declamations of the pseudo-Quintilian, the Controversiae and Suasoriae of Seneca, and the beginning of the Dialogus attributed to Tacitus.

8. The four codices used by Schott,—Covarruvianus, Brugensis, Vaticanus and Augustodunensis. Of these the first two were treated under 4 and 5; the Vaticanus can be identified neither with V nor v mentioned above under 3 and 6; the Augustodunensis has disappeared.[283]

2nd MSS. of the Excerpts of the Controversiae.—1. Codex Montepessulanus (M), parchment, 9th or 10th century, corrected shortly afterwards by a second hand and much later by a third. The Excerpts are preceded by the Declamations of the pseudo-Quintilian.

2. Codex Parisinus (P) (formerly Colbertinus), parchment, 13th century.

3. Codex Parisinus (S) (formerly Sorbonianus), parchment, 13th century. Closes with the word "actio" in Excerpt vi, 7.

4. Codex Admontanus, parchment, 12th century.

5. Codex Berolinensis, parchment, 14th century. Contains an "Expositio fratris Nicholai" which is of importance for the text-criticism in so far that in some cases Seneca's words can be more easily found out from the notes in which they are quoted for explanation than from the text of the scribe.

There are many other manuscripts of the Excerpts. The

[283] Cf. Höfig, *De Sen. rhet. quatt. cod. MSS. Schott*, p. 6. Höfig considers it very probable that all four go back to one archetype, p. 8. Schott and Höfig range them in respect to value and importance in the following order: Covarruvianus, Vaticanus, Brugensis, Augustodunensis. They were all written on parchment and contained the Greek; p. 12 sq. discusses their relations to one another and to the archetype.

Montepessulanus is by far the best of all. Although carelessly written by an ignorant scribe, it is quite free from interpolations, with which the others are teeming. According to Hoffmann the MS. most akin to the Montepessulanus is the Admontanus,[284] although the latter is neither derived from nor a copy of the former, the Admontanus being from a separate codex which, however, contained many corrections and erasures.

2. *Editions.*

The Excerpts are found among the works of Seneca the philosopher, printed at Naples in 1475, reprinted in 1478.

The first edition of the Suasoriae and Controversiae (in this order), with the prefaces of books vii, ix and x and some of the works of Seneca the philosopher, was printed at Venice in 1490 and again in 1492 and 1503. In this edition the Greek words are omitted.

The editio Frobeniana was brought out by Erasmus at Basle in 1515. It is like the Venetian edition except that in it the Suasoriae and Controversiae follow the Excerpts without the interposition of some of the smaller works of the philosopher Seneca.

John Hervagen and Bernard Brand printed an edition at Basle in 1557 in which the Controversiae precede the Suasoriae. The Greek is omitted.

The Roman edition of Muretus, printed in 1585, claims "Complures lacunas quae erant in controversiis, etsi non omnes (quis enim hoc mortalium praestet?) explevit ex codice multae aetatis at fidei de bibliotheca Vaticana." The order of the books is the

[284] On the value of the MSS. of the Excerpts for restoring the text of the Controversiae, since the Excerpts were prepared from an older and better codex than the archetype of the existing MSS. of the Controversiae and Suasoriae, and since they alone contain the prefaces of the first four books of the Controversiae, cf. Spengel, *Gelehrte Anzeigen der bayrischen Akademie der Wissenschaften* xlvii (1858), pp. 1–10; Kiessling, *Rh. Mus.* xvi (1861), pp. 50 sq.; *Beitr. zur Texteskrit des Rhet. Sen.*, pp. 32 sq.; Konitzer, *Quaest. in Sen. patr. crit.*, p. 12; Hoffmann, *Ueber eine Admont. Pergam-Handschr. der Exc. des ält. Sen.*, p. 174. Hoffmann gives a full description and estimate of the Admontanus, based on a comparison with the Antverpiensis and Bruxellensis on one hand, and the Montepessulanus on the other, cf. pp. 173. 178. Hoffman also thinks that the Parisinus and Sorbonianus came from the same source as the Admontanus, cf. p. 178.

same as in the Hervagian edition, but the Excerpts of books i, ii, vii, ix and x are omitted.

The editions thus far mentioned attributed the Controversiae and Suasoriae to Seneca the philosopher, and accordingly joined them to his works. The first to edit them separately was Nicolaus Faber at Paris in 1587. The Controversiae come first, then the Suasoriae, and then the Excerpts (Declamations).

Andreas Schott of Heidelberg in 1603. Of this there are several reprints, "cum uberioribus notis et coniecturis Nic. Fabri, Andr. Schotti, I. Gruteri, Fr. Jureti, I. Lipsii, Io. Petreii, Fer. Rinciani, I. Opsoroei." As stated above, this edition was based on the four codices,—Toletanus (Covarruvianus), Brugensis, Vaticanus, and Augustodunensis, the preference given to the first.

J. F. Gronovius at Lyons in 1649. The corrections of Toletanus (t), which Schott incorporated into his edition, passed into that of Gronovius and thence into the Vulgate or Elzevir edition of 1672. This contains the valuable prefaces, notes, and ingenious emendations of Faber, Schott, Gronovius, and especially of Johannes Schulting.

Conrad Bursian, Leipzig, 1857, based on the Antverpiensis and Bruxellensis (preference given to the latter). The Vaticanus was not known to Bursian.

Adolph Kiessling, Leipzig, 1872. Kiessling made use of the critical material accumulated since Bursian's edition.

H. J. Müller, Vienna, Prague and Leipzig, 1887.

PART III.—THEMES OF THE SUASORIAE AND CONTROVERSIAE.

I.—The sources.

From what has been said in Parts I and II in regard to the subjects treated by the writers of Suasoriae it is apparent that the inquirer as to the sources whence these subjects were drawn, is confronted by a vagueness and confusion in the material with which he has to deal, which make definite statements difficult in most cases and in many impossible. Two facts may be premised with certainty.

First: that at the period of Seneca the Elder a great amount of rhetorical material had accumulated "in stock," as it were, for the free use of the declaimers. We find traces of this accumulation from the time of Sulla, when the productions of the rhetoricians seem to have first taken on a Roman coloring. With the opening of schools of rhetoric in Latin, modelled on the Greek, there would naturally arise a Latin paraphrasing of the topics on which the teachers of the Greek schools had so long employed their skill. The Suasoriae, owing to their simpler nature, seem to have reached a complete development earlier than the Controversiae. Thus we find in *Ad Herennium* iii, 2, 2 as a subject of deliberation, whether "Karthago tollenda an reliquenda videatur";[285] "ut si Hannibal consulat cum ex Italia Karthaginem arcessitur, in Italia remaneat an domum redeat an in Aegyptum profectus occupet Alexandriam"; "ut si deliberet senatus captivos ab hostibus redimat an non";[286] "ut si deliberet senatus (bello Italico) solvatne legibus Scipionem ut eum liceat ante tempus consulem fieri"; "ut si deliberet senatus bello Italico, sociis civitatem det an non"; iii, 5, 8; "qui a Poeno circumsessi deliberant, quid agant."[287] All these subjects may be placed as

[285] Cf. Cicero, *De inv.* i, 8, 11: "si Karthaginem relinquerimus incolumem num quid sit incommodi ad rem publicam preventurum"; and *ibid.* 12, 17: "utrum Karthago diruatur an Karthaginensibus reddatur an eo colonia deducatur."

[286] Cf. Cicero, *De Orat.* iii, 28, 109: "placeatne a Karthaginensibus captivos nostros redditis suis recuperari?"

[287] Cf. Cicero, *De inv.* ii, 57, 171: "necesse est Casilinenses se dedere Hannibali . . . nisi si malunt fame perire . . . sive velint Casilinenses se dedere sive famem perpeti atque ita perire, necesse est Casilinum venire in Hannibalis potestatem."

parallels to those of the seven extant Suasoriae of Seneca. In *Ad Herennium* i, 3, 5 we find as the subject of a declamation "pro viro forti contra parricidam"; in i, 14, 24 are found two subjects of Controversiae, viz. "ut ille, qui de eo servo qui dominum occiderat, supplicium sumpsit, cui frater esset, antequam tabulas testamenti aperuit, cum is servus testamento manumissus esset"; "ut ille, quid ad diem commeatus non venit, quod aquae interclusissent"; in i, 15, 25 is found another, viz. "ut Orestes, cum se defendit in matrem conferens crimen." These three subjects seem to have been taken from the Greek rhetoricians.[288] Many other subjects of Controversiae are found in *Ad Herennium*, as i, 13, 23 on the conflict of four different laws in the case of Malleolus the matricide, viz. "Si furiosus existet, adgnatum gentiliumque in eo pecuniaque eius potestas esto"; "Qui parentem necasse iudicatus erit, ut is obvolutus et obligatus corio devehatur in profluentem." "Paterfamilias uti super familia pecuniave sua legaverit, ita ius esto." "Si paterfamilias intestatus moritur, familia pecuniaque eius adgnatum gentiliumque esto."[289] *Ad Herennium* i, 14, 24: "ut Caepio ad tribunos plebis de exercitus amissione."[290] The fourth book of *Ad Herennium* is full of extracts from Controversiae, while from Cicero's *De inventione* a long list might be made out, the subject-matter being taken from both Roman and Greek history. As examples of the former compare Cicero, *De inv.* i, 30, 48: "velut [Horatii factum a populo approbatum, quod occidit sororem, cum illa devictum Curiatium hostem defleret; velut] Gracchi patris factum . . . ."; ii, 26, 78, also on the killing of his sister by Horatius. As examples from Greek history: i, 30, 47: "nam si Rhodiis turpe non est portorium locare, ne Hermocreonti quidem turpe est conducere"; ii, 23, 69: "cum Thebani Lacedaemonios bello superavissent et fere most est Graiis, cum inter se bellum gessissent, ut ei, qui vicissent tropaeum aliquod in finibus

[288] Cf. Quintilian, *Inst. Orat.* vii, 4, 14 sq.; Cicero, *De inv.* i, 13, 18; ii, 31, 96; Quintilian, *l. c.* 4, 8.

[289] Cf. Cicero, *De inv.* ii, 50, 148, where the first, third and fourth laws stated above are mentioned and the punishment prescribed by the second is said to have been inflicted, the name of the criminal however not being given. The point at issue is the same in both cases, viz. whether the guilty man had or had not the right to make a will. For other later cases of the crossing of laws cf. Seneca, *Contr.* ix, 13; Quintilian, *Decl.* 359; Calpur. Flaccus, *Decl.* 14; 15.

[290] Cf. Cicero, *De orat.* ii, 28, 124: "illam Norbani seditionem ex luctu civium et ex Caepionis odio, qui exercitum amiserat . . ."

statuerent victoriae modo in praesentiam declarandae causa, non ut in perpetuum belli memoria maneret aëneum statuerunt tropaeum. Accusantur apud Amphictyonas, id est apud commune Graeciae consilium." At this period the subjects treated still appear to be such as had some sort of basis in mythology or history, or some possible connection with the facts of real life. But the development toward the unreal and impossible seems to have gained rapid headway, for we find Tiberius propounding to the rhetoricians such questions as "Who was the mother of Hecuba?" "What songs did the Sirens sing?"[291] It seems probable that this occurred during Tiberius's voluntary exile at Rhodes, as we know that while there he was in the habit of attending the rhetorical schools. At this time, which nearly coincides with that of the elder Seneca's second coming to Rome, both the accumulation of subjects for declamation and their development in artificiality and absurdity seem to have been well-nigh complete.

The second fact which may be definitely asserted in connection with the subjects employed by the declaimers, is that from this vast general fund of fact and fantasy, the rhetoricians appropriated whatever portions suited their purpose, changing and arranging at will, without a thought of the ultimate originals and without concern for their accurate reproduction. The subjects of Seneca's Controversiae as also of the Declamations of the pseudo-Quintilian and Calpurnius Flaccus, by their very nature exclude the possibility of an exact and indubitable tracing to their origin. In their extant form and conception, at least, they were born in the exuberant fancy of the rhetoricians, when and by whose agency in each case it is now impossible to ascertain. A great many of the themes must undoubtedly have come to the Latin rhetorical schools from the Greek, as is evident from the political and social conditions they presuppose; this will be shown below in individual instances by reference to the rhetorical writings of Hermogenes. As has been said above, and as will be proved by a comparison of Seneca's Controversiae with the Declamationes of the pseudo-Quintilian and Calpurnius Flaccus, many of the subjects had become stereotyped as school exercises, passing from one rhetorician to another and from one school to another through the various periods and phases of rhetorical study. When once a

[291] Cf. Suetonius, *Tib.* c. 70.

stock of subjects had accumulated, it required but little imagination to form new ones by slightly varying the old. Thus one of the themes most highly favored in the schools seems to have been the disinheriting of a son[292]. Now a father may disinherit a son for marrying against his will, for refusing to slay his adulterous mother, for declining to be adopted by a rich man, for killing his adulterous brother, etc. The same variety of treatment is possible with many other subjects as a glance at either Seneca or the pseudo-Quintilian will show. The influence of analogy also must have been very great in this constant and kaleidoscopic rearrangement of elements already at hand. In tracing the sources of the themes treated by Seneca, as well as of individual dicta in his writings, it is necessary to guard continually against assuming as their *fontes* passages in earlier classical writers which, although strikingly similar, are themselves also derived from a common original. Coincidence must not be mistaken for derivation. These *fontes* are in many cases utterly lost or hopelessly obscured, and one might search for them in vain throughout the whole extent of pre-Augustan classical literature. No absolute rule of discrimination can be laid down. The following pages are an effort to classify the themes treated by the elder Seneca and to give what has been ascertained about the origin of such as may with reasonable certainty be traced to a definite source. The work is largely tentative but will not be without value if it shall interest others to search for additional facts along the same lines.[293]

Suasoria i.

Alexander deliberates whether he shall cross the ocean.

The theme and the discussion in the Divisio, in regard to addressing a ruler, were probably suggested by the speech of the philosopher Anaxarchus, in which he proposed, after the subjugation of Asia by Alexander, that the latter should be deified and receive divine homage in the manner of the Persian kings. Callisthenes as a defender of Greek manliness protested against

[292] In the pseudo-Quintilian there are 22 cases of disinheritance; for Seneca cf. the classification of subjects below.

[293] Cf. Dirksen, Ueber die durch die griechischen und lateinischen Rhetoren angewendete Methode der Auswahl und Benutzung von Beispielen römisch-rechtlichen Inhalts. *Abhandlungen der Königlichen Akademie der Wissenschaften.* Berlin, 1847, i, pp. 48–77.

this fulsome adulation but met with a tragic end.[294] In Contr. vii, 7, 19 Seneca mentions that when this Suasoria was delivered on a certain occasion, in the rhetorical school, a voice exclaimed: "Quousque invicte," which of course recalls Cicero's first oration against Cataline. The subject of this suasoria seems moreover to have been one of the stock topics of the schools, as it is among those enumerated by Quintilian as current among the rhetoricians.[295] The theme is, however, based on an historical fact.[296]

Suasoria ii.

The three hundred Lacedaemonians sent against Xerxes, when the three hundred sent from all Greece have fled, deliberate whether they themselves shall flee.

The historical kernel of this second Suasoria is the assembly of the several Greek contingents at Thermopylae and their subsequent dismissal by Leonidas, King of the Spartans.[297] On the question of "trecenti" vs. "treceni" Bursian remarks: "Cum per totam suasoriam (excepting § 5) semper de 'trecentis' sermo fiat . . . . rhetor finxisse statuendus est e singulis Graecis urbibus quotquot viribus pollebant, trecenos milites Spartanis auxilio missos fuisse, quod non magis contra historiae fidem peccat quam quae de Cimone, Phidia, Parrhasio, Popillio, aliis referuntur." As may be seen from the account of Herodotus the other Greeks did not flee but were dismissed by Leonidas.[298]

Suasoria iii.

Agamemnon deliberates whether he shall immolate Iphigenia, since Calchas asserts that otherwise the voyage cannot take place.

The theme of this Suasoria was well known from the tragedians, and therefore it is not at all surprising that the rhetoricians made use of such a favorite subject. In fact, it seems to have been one of those most popular in the schools. Compare Petronius, i, 6: "Ingens scholasticorum turba in porticum venit, ut apparebat, ab

[294] Cf. Curtius, viii, 1, 45; v, 13; Arrian, iv, 9, 4; Plutarch, *Alex.* cc. 50 sq.

[295] Cf. *Inst. Orat.* iii, 8, 16; vii, 4, 2.

[296] Cf. Curtius, ix, 9: "Pervicax cupido incessit (sc. Alexandrum) visendi Oceanum adeundique terminos mundi."

[297] Cf. Herodotus, vii, 220 sq.

[298] Cf. also Cornelius Nepos, *Themist.* 3.

extemporabili declamatione nescio cuius, qui Agamemnonis suasoriam exceperat"; cf. also Quintilian, *Inst. Orat.* ii, 13. 13. Lucretius considered it worthy of some pathetic verses: "Et moestum simul ante aras adstare parentem Sensit et hunc propter ferrum celare ministros, Adspectuque suo lacrimas effundare civis. Muta metu terram genibus submissa petebat." [299]

Suasoria iv.

Alexander the Great deliberates whether he shall enter Babylon when by the response of the augur he had been forewarned of danger.

The theme of this Suasoria is taken from history. Compare Arrian, vii, 16, 5: "*Ἀλέξανδρος δὲ ὡς τὸν Τίγρητα ποταμὸν ξὺν τῇ στρατιᾷ διέβη ἐλαύνων ἐπὶ Βαβυλῶνος, ἐνταῦθα ἐτυγχάνουσιν αὐτῷ Χαλδαίων οἱ λόγιοι καὶ ἀπαγαγόντες ἀπὸ τῶν ἑταίρων ἐδέοντο ἐπισχεῖν τὴν ἐπὶ Βαβυλῶνος ἔλασιν. λόγιον γὰρ γεγονέναι σφίσιν ἐκ τοῦ θεοῦ τοῦ Βήλου μὴ πρὸς ἀγαθοῦ εἶναι τὴν πάραδον τὴν ἐς Βαβυλῶνα ἐν τῷ τότε τὸν δὲ ἀποκρίνασθαι αὐτοῖς λόγος [τοῦ] Εὐριπίδῃ ὧδε: 'Μάντις δ' ἄριστος ὅστις εἰκάζει καλῶς'. 'σὺ δέ, ὦ βασιλεῦ,' ἔφασαν οἱ Χαλδαῖοι, 'μὴ πρὸς δυσμὰς ἀφορῶν αὐτὸς μηδὲ τὴν στρατιὰν ταύτῃ ἐπέχουσαν ἄγων παρελθεῖν· ἀλλὰ ἐκπεριελθὼν πρὸς ἕω μᾶλλον'*" Compare also Pompeius Trogus, Epitome of Justinus, *Philippicarum* xii.

Suasoria v.

The Athenians deliberate whether they shall remove their Persian trophies, since Xerxes threatens to return unless they do so.

The only element of reality in the subject of this Suasoria is the reference to the custom of preserving trophies taken from defeated foes.

Suasoria vi.

Cicero deliberates whether he shall implore mercy from Antony.

The fictitious argument of this Suasoria was suggested by the enmity between Cicero and M. Antonius, which led to the violent death of the former. Moreover this theme and that of the next Suasoria also, seem to have belonged to the stock subjects of the rhetorical schools.[300] It may be said that the signal success of Cicero's life and its tragic end were favorite topics with the later Roman writers in general.[301]

[299] *De rer. nat.* i, 95 sq. [300] Cf. Quintilian, *Inst. Orat.* iii, 8, 46.
[301] Cf. Morawski, *De rhet. lat.*, pp. 16 sq.

Suasoria vii.

Cicero deliberates whether he shall burn his own writings, since Antony promised him security if he should do so.

On the theme of the seventh and last Suasoria compare what was said above in regard to the sixth. Compare also Suas. vi, 14: "Solent enim scholastici declamitare: deliberat Cicero an salutem promittente Antonio orationes suas comburat. Haec inepte ficta cuilibet videri potest."

Controversia i, 1.

Patruus abdicans.—Liberi parentes alant aut vinciantur.

Two brothers, one of whom had a son, disagreed. When the uncle became needy the nephew against the prohibition of his father supported him. Being disinherited by his father for this, he was silent. He was adopted by the uncle who by receiving an inheritance became rich.. Then the young man's father began to suffer want and was supported by his son against the prohibition of the uncle, who thereupon disinherited the young man.

The subjects of the support of the aged, and disinheritance were two of the revelling grounds of the declaimers, cf. Contr. iii, 19; vii, 4; Quintilian, *Decl.* maj., 5; Quintilian, *Inst. Orat.* v, 10, 16 and vii, 6, 5.

Controversia i, 3.

Incesta saxo deiciatur.

A priestess, accused of incest, before she was hurled from the rock invoked Vesta. She remained alive and was demanded again for a repetition of the penalty.

This is a fictitious law of the schools, for by Roman law an incestuous priestess was buried alive. The penalty imagined by the rhetoricians may have had its origin in a confusion of the well-known story of Sappho's precipitating herself from a rock on account of misfortune in love, and the fact that traitors in the early time at Rome were thrown down from the Tarpeian Rock. In 273 B. C. a Vestal was hanged.[302]

Controversia i, 4.

Fortis sine manibus.

A brave man, who had lost both hands in war, caught his wife and her paramour *in flagrante* and ordered his son to kill them.

[302] Cf. Orosius, iv, 5, 9.

The young man refused, and the adulterer escaped; whereupon the son is disinherited.

This theme is very similar to that of Quintilian, *Decl.* 330. It was very likely suggested per contrarium by the story of Orestes.[303]

Controversia i, 5.

Raptor duarum.

A man raped two maidens in the same night; one demanded his death, the other marriage.

This seems to have been a favorite subject with both the Roman and Greek rhetoricians, and was in all probability transferred from the latter to the Roman schools. It is introduced by Hermogenes in his "*περὶ τῶν στάσεων*,"[304] and is the theme, in a more developed form, with a sequel of Calpurnius Flaccus, *Decl.* 49.

Controversia i, 6.

Archipiratae filia.

A man captured by pirates wrote to his father in regard to a ransom but was not ransomed. The daughter of the pirate-chief compelled the captive to swear that he would marry her if he were freed. He did so, and thereupon the daughter left her father and followed the youth. He returned to his father and married her. His father afterward commanded him to divorce the pirate's daughter and marry a certain orphan. When he refused, his father disinherited him.

For the introduction of the orphan reference may be made to the Attic law quoted in Terence, *Phormio* 125, which compelled orphans to marry their next of kin, and also made it obligatory on the latter to receive them as wives. A somewhat similar subject is found in Quintilian, *Decl.* 376.

Controversia ii, 5.

Torta a tyranno pro marito.

A wife was tortured by a tyrant in order to obtain from her information as to the complicity in a plot of her husband. She could not be forced to tell. Afterward the husband killed the tyrant and divorced his wife on the charge of barrenness, as she had borne him no children in a period of five years. She sued him for ingratitude.

[303] Cf. Quintilian, *Inst. Orat.* iii, 11, 4 sq.
[304] Cf. Spengel, *Rhet. Graec.* ii, 171.

This law (*ingrati actio*), like so many made use of in the declamations, was an Attic one.[305] A similar case of *iniusti repudii* is treated in Quintilian, *Decl.* 251, only that in this latter case the wife was raped and demanded marriage instead of the death of the ravisher. The subject of wife and tyrant is also introduced by Hermogenes, "*περὶ τῶν στάσεων*,"[306] in the following form: A wife showed her husband the way to a tyrant, a secret which no one else had been able to discover. The husband killed the tyrant and then accused his wife of adultery with him.

Controversia iv, 2.

Sacerdos integer sit.

The Pontifex L. Caecilius Metellus lost his eyesight while rescuing the Palladium from the burning temple of Vesta. Thereupon the priesthood was denied him.

This theme is taken from history; the occurrence took place B. C. 241.[307]

Controversia iv, 5.

Privignus medicus.

A man disinherited his son. The latter studied medicine, and when his father fell ill and was given up by the other physicians, restored him to health. He was thereupon restored to his father's favor. His step-mother having fallen ill was also despaired of by the physicians. The father asked the son to cure her and upon his refusal disinherited him.

This theme seems to be evidently from the Greek as it is used by Lucian in the "*ἀποκηρυττόμενος*".[308]

Controversia v, 5.

The well-known story of Parrhasius and the captive.

Controversia v, 6.

Raptus in veste muliebri.—Lex: Impudicus contione prohibeatur.

A fair youth made a wager that he would walk in public dressed in female attire. He did so, and was raped by ten youths. He brought action against them on a charge of violence and they

[305] Cf. Valerius Maximus, ii, 6, 6 *de Areopago*; v, 3 *de Phocione.*
[306] Spengel, *Rhet. Graec.* ii, 137.
[307] Cf. Livy, *Epitome* xix.
[308] Cf. Quintilian, *Inst. Orat.* vii, 2, 17.

were convicted. Being excluded from the public assembly by the magistrate, the young man brought action against him on a charge of insult.

This theme was not founded on a fictitious law of the schools but on the Attic code.[309] Hermogenes in his "*περὶ τῶν στάσεων*"[310] uses as an example the case of a youth who used cosmetics, and was thereupon charged with *πορνεία*.

Controversia v, 7.

Trecenti ab imperatore non recepti.—Lex: Nocte portas aperire in bello non liceat.

Three hundred captives fleeing from the enemy came to the gates at night. The commander would not open to them and they were killed before the gates. After a victory the commander was charged with injuring the state.

This theme must have been current in the Greek schools also, as it is given by Hermogenes "*περὶ εὑρέσεως*" *β'*[311].

Controversia vi, 5.

Iphicrates reus.—Lex: Qui vim in iudicio fecerit, capite puniatur.

Iphicrates, having been twice defeated in battle by the king of the Thracians, concluded a treaty with him and married his daughter. When he returned to Athens and pleaded his cause certain Thracians were seen about the court armed with knives, and Iphicrates himself, although a defendant, drew his sword. When the judges were called upon to give their opinion they openly pronounced for an acquittal. Iphicrates was thereupon accused of having used violence in court.

This theme appears to be taken from history, but with the facts a good deal modified. Xenophon[312] states that Iphicrates carried on war against the Thracians. Cornelius Nepos, *Iphicrates* 2, 1: "Bellum cum Thracibus gessit; Seuthem socium Atheniensium in regnum restituit"; compare also Aeschinus, *περὶ παραπρεσβείας*, 27–29; Diodorus Siculus, xvi, 21; Plutarch, *Apoph.*, 187B; Aristotle, *Rhet.* ii, 23, 6: "*. . . . ᾧ ἐχρήσατο Ἰφικράτης πρὸς Ἀριστοφῶντα ἐπερόμενος εἰ προδοίη ἂν τὰς ναῦς ἐπὶ χρήμασιν· οὐ φάσκοντος*

[309] Cf. Aeschines against Timarchus.
[310] Cf. Spengel, *Rhet. Graec.* ii, 147.
[311] Cf. Spengel, *Rhet. Graec.* ii, 196.
[312] *Hellen.* iv, 8, 34 sq.

δὲ, εἶτα εἶπεν, σὺ μὲν ὢν Ἀριστοφῶν οὐκ ἂν προδοίης, ἐγὼ δ' ὢν Ἰφικράτης." The same topic is treated in Quintilian, *Decl.* 386.[313]

Controversia vi, 7.

Demens qui filio cessit uxorem.

A man having two sons married a second wife. When one of the young men was ill nigh unto death, the physicians said the cause of his illness was a love affair. When the father compelled the son at the sword's point to tell him the truth, the young man confessed that he loved his step-mother. The father gave up his wife to him and thereupon was charged with insanity by his other son.

It seems evident that this theme is taken from the history of Seleucus who gave up his wife Stratonice to his sick son Antiochus.[314] A similar case is treated in Quintilian, *Decl.* 291 and Calpurnius Flaccus, *Decl.* 46, except that in this latter case it is a brother who at the request of his father yields his wife to his sick brother and is afterward caught in adultery with his former wife.

Controversia vii, 2.

Popilius Ciceronis interfector.

Compare on this theme the remarks made on Suasoriae vi and vii.[315]

Controversia vii, 6.

Demens qui servo filiam iunxit.

A tyrant permitted the slaves to outrage their mistresses. The chief men of the state fled and among them one who had a son and a daughter. While all the other slaves outraged their mistresses his slave saved the daughter from this fate. After the tyrant was killed and the chiefs had returned the slaves were crucified. But the faithful slave was set free by his master who gave him his daughter as a wife. Thereupon the son charged his father with insanity.

This theme was taken from the history of the Volsinii, the inhabitants of a city in Etruria who, becoming enervated by excessive luxury, were overpowered by their slaves and freedman. The tyrant is an addition made to the story by the rhetoricians.[316]

[313] Cf. also Quintilian, *Inst. Orat.* v, 12, 10.
[314] Cf. Plutarch, *Demetrius* c. 28; Valerius Maximus, v, 7, Ext. 1.
[315] Cf. also Livy, *Epit.* cxx.
[316] Cf. Valerius Maximus, ix, 1, Ext. 2; Orosius, iv, 5, 3; Aurelius Victor, *De viris illustribus* c. xxxvi.

Controversia viii, 6.

Pater naufragus divitis socer.

A rich man three times importuned a poor man to give him his daughter in marriage, and the poor man three times refused, but having started with his daughter on a voyage he was shipwrecked on the estate of the rich man who again asks for the daughter as his wife. The poor man wept in silence. After the marriage they return to the city where the poor man wishes to lead his daughter before the magistrate, but the rich man opposes this.

This theme may easily have been formed on the analogy of Plautus, *Trinum.* Act iii, Scene 2, where the poor but proud Lesbonicus refuses to give his sister to Lysiteles without a marriage portion.

Controversia ix, 2.

Maiestatis laesae sit actio.

The proconsul Flamininus, at the request of his mistress while at table, who said that she never had witnessed a decapitation, had a condemned man executed. He is thereupon accused of *laesae maiestatis.*

This theme is based upon an historical fact. L. Flamininus was expelled from the senate by Cato when censor in 184 B. C., because of his conduct seven years before, when he wantonly killed a chief of the Boii, who had taken refuge in his camp. Valerius Maximus agrees with Seneca that this was done to please a mistress, while Valerius Antias, cited in Livy, xxxix, 43, gives a similar story. Livy and Plutarch say that the cruel act was done to please a favorite boy.[317]

II.—Classification.

A.—*The Suasoriae.*

I.—Simple (whether something is or is not to be done), i, vi.
Duplex (a choice between two alternatives), ii, iii, iv, v, vii.

II.—According to the sources:

1. Historical, iv.
2. Suggested by an historical occurrence, i, ii.
3. Derived from the poets, iii.
4. Fictitious, v, vi, vii.

[317] Cf. Livy, xxxix, 42; Cicero, *De senectute* 12; Plutarch, *Cato* c. 17; *Flamininus* c. 18; Valerius Maximus, ii, 9, 3; Aurelius Victor, *De viris illustribus* 47.

B.—*The Controversiae.*

I.—General character of the suit.

1. Criminal: i, 3, 5. ii, 7. iii, 5, 9. iv, 1, 4, 6. v, 1, 6, 7. vi, 3, 4, 5, 6, 8. vii, 3, 5, 7, 8. viii, 1, 6. ix, 2, 4, 5, 6. x, 1, 4, 5, 6.
2. Civil: i, 1, 4, 6, 7, 8. ii, 1, 2. iii, 1, 2, 3, 4, 6, 8. iv, 3, 5, 8. v, 2, 4, 5. vi, 1, 2. vii, 1, 4. viii, 2, 3. x, 2.
3. Affecting the political or social status: i, 2, ii, 3, 4, 5, 6. iii, 7. iv, 2, 7. v, 3, 8. vi, 7. vii, 2, 6. viii, 4, 5. ix, 1, 3. x, 3.

II.—According to the point at issue (*i. e.* the question to be decided, or the charge brought).

1. Admission of a tyrant to office, v, 8.
2. Adultery, iv, 7; vi, 6.
3. Claims of the blinded, iii, 1.
4. Damage to property, iii, 6; v, 5.

5. Deception (*circumscriptio*), vi, 3.
6. Desecration of a tomb, iv, 4.
7. Disinheritance (*abdicatio*), i, 1, 4, 6, 8; ii, 1, 2; iii, 2, 3, 4; iv, 3, 5; v, 2, 4; vi, 1, 2; vii, 1; viii, 3, 5; x, 2.
8. Force unlawfully applied (*vis*), ix, 5.
9. Force in court (*vis in iudicio*), vi, 5; ix, 3.
10. Force and intimidation (*vis et metus*), iv, 8.
11. Ingratitude (*ingrati actio*), ii, 5; ix, 1.
12. Injury to the person (*iniuria*), iv, 1; v, 6; x, 1, 6.
13. Insanity, ii, 3, 4; vi, 7; vii, 6; x, 3.
14. *Laesae maiestatis*, ix, 2.
15. *Laesae reipublicae*, v, 7; x, 4, 5.
16. *Maleficium*, v, 1.
17. Maltreatment (*malae tractionis actio*), iii, 7; iv, 6; v, 3.
18. Misbehavior (*de moribus*), vii, 2.
19. Parricide, iii, 2; v, 4; vii, 3, 5; ix, 4.
20. Poisoning, iii, 7; vi, 4, 6; vii, 3; ix, 6.
21. Priestly integrity (moral and physical) i, 2, 3; iv, 2; vi, 8.
22. Punishment of rape, i, 5; iii, 5; vii, 8.
23. Reward of bravery, iv, 7.
24. Sacrilege, viii, 1, 2.
25. Seditious meeting (*coetus et concursus*), iii, 8.
26. Slaves, punishment of, iii, 9; viii, 3; (cf. vii, 6.)
27. Suicide, refusal of burial to, viii, 4.
28. Support of parents, i, 1, 7; vii, 4.
29. Treason, vii, 7; (cf. x, 6.)

III.—Side issues (*i. e.* with what the action is concerned).

1. Adultery, rape and incest, i, 2, 3, 4, 5; ii, 3, 7; iii, 5, 8; iv, 3; v, 6; vi, 8; vii, 8; viii, 6; ix, 1, 6.
2. Exposed children, ix, 3; x, 4.
3. Mistresses, ii, 4; ix, 2.
4. Pirates, i, 6, 7; iii, 3; vii, 1, 4.
5. Poor and rich, ii, 1; v, 2, 5; viii, 6; x, 1.
6. Step-mother and step-children, ii, 7; iv, 5, 6; ix, 5, 6.
7. Suicide, v, 1; viii, 1, 3, 4.
8. Tyrants and tyrannicide, ii, 5; iii, 6; iv, 7; v, 8; ix, 4.
9. Valiant man (*fortis*), i, 4, 8; iv, 4; viii, 5; x, 2.

III.—Parallels of the subjects discussed in the Controversiae of Seneca, the Declamations of the pseudo-Quintilian, and Calpurnius Flaccus.

1. *Subjects identical.*

Seneca, ii, 3—Quintilian, 349.

A ravisher must perish unless within thirty days he appeases his own father and the father of the ravished.

A ravisher appeased the father of the ravished but not his own. He charges him with insanity.[318]

Seneca, ii, 4—Calpurnius Flaccus, 30.

A man disinherited his son; the latter betook himself to a courtesan and begot a son by her. Being ill he sent for his father; when he had come he commended his son to him and died. After his death his father adopted the child; he is charged with insanity by his other son.[319]

Seneca, iii, 5—Calpurnius Flaccus, 33.

A ravished woman may require either the death of the ravisher, or that he shall marry her without dowry.[320]

A ravisher demands that the ravished one be produced (so that she may make her choice). The father does not permit.[321]

Seneca, iii, 9—Quintilian, 380.

A master being ill asked his slave to give him poison, the latter refused. The master provided by his will that the slave should be crucified by the heirs. The slave appeals to the tribunes.[322]

Seneca, iv, 4—Quintilian, 369.

Action for desecration of a tomb. During a war in a certain state a valiant man, who had lost his arms in battle, took the arms from the tomb of another valiant man. After fighting bravely he restored the arms. He received the reward (of bravery) but was accused of desecration of a tomb.[323]

[318] Cf. Quintilian, *Inst. Orat.* ix, 2, 90.

[319] The slight variations in the theme as given by Calpurnius Flaccus do not affect the point at issue. These are that the father disinherited the son on account of his love affair, and that he only wished to adopt the child.

[320] Cf. Seneca, i, 5; vii, 8; viii, 6.

[321] In Calpurnius Flaccus the father forcibly restrains the woman.

[322] Quintilian adds that the master had promised the slave his liberty.

[323] In Quintilian the substance of the theme is given in a shorter form.

Seneca, vi, 5—Quintilian, 386.

He who uses violence in court should suffer capital punishment.

Iphicrates having been sent against the king of the Thracians and conquered twice in battle, concluded a treaty with him and married his daughter. When he had returned to Athens and was brought before a court, some Thracians were seen about armed with knives, and the defendant himself drew a sword. When the judges were called upon to pronounce judgment they openly acquitted him. He is accused of using violence in court.[324]

Seneca, vi, 6—Quintilian, 354—Calpurnius Flaccus, 39.

Action for poisoning.

A man who had a wife and by her a marriageable daughter, informed his wife to whom he intended to give the daughter in marriage. The wife said: "She shall die sooner than marry that man." The daughter died before the wedding day with suspicious signs of cruel treatment and poisoning. The father put a maid-servant to the torture: she said that she knew nothing about poison but she did know about the adultery of her mistress with that man to whom he was intending to give his daughter in marriage. The father accused his wife of poisoning and adultery.[325]

Seneca, vii, 3—Quintilian, 17.

A son who had been three times disinherited and forgiven was surprised by his father in a retired part of the house preparing a potion. When asked what it was he said it was poison, and that he wished to die; he poured it out. He is accused of parricide.[326]

[324] Quintilian limits himself to the brief statement that Iphicrates came into court girded with a sword and brought with him Cotys king of the Thracians.

[325] In Quintilian the episode of the torture and confession of the maid-servent is wanting; suspicion against the wife arises from her saying: "She shall die before she marries," and from the fact that the husband had seen her secretly conversing with the handsome young man to whom he betrothes his daughter; cf. also Hermogenes, *περὶ τῶν στάσεων*, Spengel, *Rhet. Graec.* ii, 143.

[326] In Quintilian the dramatic touch is added that the father ordered the son to drink the mixture.

Seneca, vii, 8—Quintilian, 309.

A ravished woman may request either the death of the ravisher, or that he shall marry her without dowry.[327]

A woman who had been ravished when produced in court chose marriage. The young man who was defendant denied that he was the ravisher. He was condemned, and the woman then chose his death although he was then willing to marry her. The man protests.[328]

Seneca, viii, 1—Calpurnius Flaccus, 41.

A magistrate may inflict punishment upon one who has confessed.

A woman who had lost her husband and two sons hanged herself. Her third son cut the rope. She, when a sacrilege had been committed and the perpetrator was being sought for, told the magistrate that she was the guilty party. The magistrate wishes to inflict punishment on her on the ground of her confession. The son objects.[329]

Seneca, ix, 6—Quintilian. 381—Calpurnius Flaccus, 12.

A poisoner may be tortured until she discloses her accomplices.

A man after the death of his wife, by whom he had a son, married another wife and by her had a daughter. The young man died, and the husband accused the step-mother of poisoning him. Having been condemned, she said under torture that her daughter was her accomplice. The daughter is demanded for punishment. The father defends her.[330]

2. *Subjects more or less cognate.*

Seneca, i, 4—Quintilian, 330.

He who surprises an adulterer with an adulteress and kills them shall be without guilt.

It shall be permissible even for a son to punish adultery in his mother.

[327] Cf. Seneca, i, 5; iii, 5; vii, 8; viii, 6.

[328] In Quintilian it is stated that she wished freedom of choice after the conviction.

[329] In Calpurnius Flaccus she has lost her husband and three sons out of four.

[330] In Quintilian this theme is given briefly with the addition that the son died "ambiguis signis." Calpurnius Flaccus uses the same phrase.

A valiant man who had lost his hands in war surprised an adulterer with his wife by whom he had a son now a young man. He ordered his son to kill but he did not. The adulterer escaped, and he disinherited his son.[331]

In Quintilian the filial piety of the son towards his mother, at the expense of his injured father, is in a different form. A man repudiated his wife on a charge of adultery; his son by her came to him and told him that he was in love with a courtesan. His father gave him money, and with it he supported his mother, who was in want, without the knowledge of his father. When his father found it out he disinherited his son.

Seneca, i, 5—Quintilian, 270—Calpurnius Flaccus, 49.

A ravished woman may require either the death of the ravisher, or that he shall marry her without a dowry.[332]

A man ravished two women the same night; one requires his death, the other marriage.

In Quintilian the act was perpetrated on one of twin sisters. The victim hanged herself, but the father produced the other in court and instructed her to require the death of the ravisher. The young man, supposing that this was the woman whom he had ravished, was condemned. When the deceit was found out the father was accused of murder.

In Calpurnius Flaccus the case is the same as in Seneca, but the point at issue is different. The court decided for the more humane demand; after the marriage the other woman bore a child (by the ravisher). The latter exposed it, but the husband of this other woman took it up and began to rear it; whereupon he is accused by his wife of *malae tractationis*.

Seneca, i, 6—Quintilian, 376.

A man captured by pirates wrote to his father in regard to a ransom, but was not ransomed. The daughter of the pirate-chief compelled the man to swear that he would marry her if he were set free; he swore to do so. She left her father and followed the young man. After returning to his father he married her. An orphan appears on the scene whom the young man's father commands him to marry after dismissing the daughter of the pirate-chief. Upon his refusal he is disinherited.

[331] From the context it would seem that the father's command to the son was to kill both the guilty parties.

[332] Cf. Seneca, iii, 8; vii, 8; viii, 6.

In Quintilian it is the daughter of a benefactor who is in the case. A man when dying offers to reveal to a young man, whom he has brought up as his own son, his true parentage if he will take an oath that he will marry the daughter whom the dying man is leaving. The young man swore to do so. Being received by his real father after the death of his benefactor, upon his refusal to marry a rich orphan, he is disinherited.

Seneca, i, 7—Quintilian, 5.

Let children care for their parents or suffer punishment.

A man killed one brother who was a tyrant, and another whom he had caught in adultery, although his father entreated him not to do so. Being captured by pirates he wrote to his father in regard to a ransom. The father wrote to the pirates offering them a double sum if they would cut off his son's hands. The pirates released the son who, afterward, when his father was in want, did not support him.

In Quintilian the same point is at issue, but the circumstances are different. A man had two sons, one respectable, the other dissipated. Both went abroad and were captured by pirates, whereupon the profligate became ill. Both wrote home in regard to a ransom. The father turned all his property into money and came to them. The pirates told him that he brought only enough to redeem one, and that he might choose whichever he wished. He ransomed the one who was ill, who died while on his way home. The other made his escape and when his father demanded support, refused.

Seneca, ii, 2—Quintilian, 357.

A husband and wife took a mutual oath that if one died the other would not survive. The husband went abroad and sent a messenger to inform his wife that he was dead. Thereupon she threw herself from a height, but survived. She is commanded by her father to leave her husband, and on her refusal is disinherited.

In Quintilian it is a wife who complains about her husband to her father and is commanded by the latter to keep the peace. But afterward when her husband had been blinded on account of adultery and she refused to desert him, she is disinherited.

Seneca, ii, 5—Quintilian, 251.

A wife, who was tortured by a tyrant to force her to declare whether she knew anything of a plot formed by her husband for the murder of the tyrant, persevered in denying. Afterward her husband killed the tyrant. As she bore no children for five years her husband divorced her under the pretext of barrenness. An action is brought for ingratitude.

In Quintilian it is a case of *iniusti repudii*, the union having taken place after a rape, when the woman had her choice between the death of the ravisher and marriage, which marriage the husband now tries to dissolve on the charge of barrenness.

Seneca, ii, 7—Quintilian, 325 and 363.

A man who had a beautiful wife went abroad. A merchant from foreign parts settled in the neighborhood, and three times made proposals to the woman, offering her gifts. She, however, refused. The merchant died, and by his will made the beautiful woman heir of all his property, adding the eulogy: "I found her chaste." She entered upon the inheritance. Her husband returned and accused her of adultery on suspicion.

In Quintilian 325 a rich man and a poor man are neighbors. There was a rumor that the poor man's pretty wife was unduly intimate with the rich man, with the connivance of her husband. The latter was accused of procuring (*lenocinii*), but was acquitted. The rich man died leaving the poor man heir to all his property, adding: "I ask you to restore this legacy to that person of whom I made a request." The poor man's wife demands the legacy as "fidei commissam."

In Quintilian 363 the poor man with the beautiful wife is solicited three times, with an offer of gifts by the foreign merchant, that he may let him his wife for an immoral purpose. The husband sends a wardrobe-maid in the garb of a matron. An action is brought for *mala tractatio.*

Seneca, vi, 7—Quintilian, 291—Calpurnius Flaccus, 46.

There may be an action for insanity.

A man who had two sons married again. When one of the young men fell ill, and was at the point of death, the physicians declared that the trouble was a mental one. The father forced the son at the sword's point to disclose the cause. He said that

he was in love with his step-mother. The father gave up his wife to him, and was thereupon charged by his other son with insanity.

In Quintilian and Calpurnius Flaccus it is one of the sons who, at the instance of his father, gives up his wife to his lovesick brother. The latter afterwards finds his wife in adultery with her former husband and kills them. For this he is disinherited by his father. In Calpurnius Flaccus it is distinctly stated that the second husband kills both; in Quintilian only the woman is mentioned as being killed.

Seneca, vii, 3—Quintilian, 377.

A son who had been three times disinherited and forgiven was surprised by his father in a retired part of the house preparing a potion. When asked what it was he said it was poison and that he wished to die; he poured it out. He is accused of parricide.[333]

In Quintilian 377 the son is driven to this desperate deed because his father was about to send him for the third time to military service.

Seneca vii, 4—Quintilian 6 and 16.

Let children care for their parents or suffer punishment.

A man who had a wife and a son by her went abroad; being captured by pirates he wrote to his wife and son in regard to a ransom. The wife lost her eyesight through weeping. She demanded support of her son as he was setting out to ransom his father. When he refuses to remain she wishes him to be sustained by force.

In Quintilian 6 the son set out to free his father by becoming captive in his place (*vicariis manibus*). He died in captivity and his corpse having been thrown into the sea was cast up on the shore of his native land. The father wishes to give it burial, the mother forbids.

In Quintilian 16 the case concerns two friends of whom one has a mother, who, while travelling abroad, fell into the hands of a tyrant. The mother lost her eyesight through weeping. The tyrant offered to allow the son to go and see his mother on condition that if he did not return by a specified day the other young

[333] Identical with Quintilian 17.

man should suffer punishment. The son having bound himself by oath to return came to his own country. His mother prevents him from returning by the law which forbids children to desert their parents in distress.

Seneca, vii, 5—Quintilian, 1 and 2.

A man after the death of his wife, by whom he had a son, married again and had a son of this marriage also. There was in the house a handsome steward. When there were frequent quarrels between the step-mother and the step-son, the latter was ordered by his father to move. He hired the dwelling next door. Rumor charged the steward and the step-mother with adultery. Finally the father of the family was found murdered in his bed-chamber, the wife wounded, and the partition wall between the houses of the father and the son broken through. The relations determined to ask the five-year old son, who slept with his father and mother, whom he recognized as the murderer. He pointed at the steward. The son accuses the steward of murder, the steward the son of parricide.

In Quintilian 1 there is no steward in the case; the *dramatis personae* are a father, his second wife and a blind son by his first wife. The father is found murdered in bed beside his wife with the son's sword sticking in the wound. On the wall separating the father's room from that of the son are the bloody marks of a hand. Step-son and step-mother accuse each other.

In Quintilian 2 there are also a blind son and a step-mother but the relations are more complicated. The son had formerly rescued his father from a burning house, and had lost his eyesight while trying vainly to rescue his mother. A time came when the step-mother asserted to the father that his son had prepared poison for him and had offered her half of the property if she would administer the poison. The son being questioned denied this, but when his father searched he found the poison about his person. When asked for whom he had prepared it the son was silent. The father altered his will making the step-mother his heir. On the same night a noise was heard in the house, and when the household entered the chamber of their master they found him murdered and the step-mother apparently asleep beside the corpse, while the blind son was standing at the door of his chamber, his bloody sword being under his pillow. Step-son and step-mother accuse each other.

Seneca, viii, 3—Calpurnius Flaccus, 47.

The father of two sons gave a wife to one. The latter went abroad; and rumor began to allege improper relations between the father-in-law and the daughter-in-law. When the husband returned he subjected his wife's maid to the torture so severely that she died under it; whereupon in his uncertainty as to what he wished to know he hanged himself. The father commanded the other son to marry the widow, and upon his refusal disinherited him.

In Calpurnius Flaccus the husband who suspected his father of improper relations with his wife surprised the latter in adultery with a man whose features were concealed. He killed only his wife, and is charged with murder. He demands that his father shall defend him, and his father objects.

Seneca, viii, 6—Quintilian, 257.

A ravished woman may require either the death of the ravisher, or that he shall marry her without dowry.[334]

A rich man three times addressed a poor man in regard to giving him his daughter in marriage, and three times the poor man refused. Having started on a voyage with his daughter the poor man was shipwrecked upon the estate of the rich man who again appealed to him in regard to marriage with his daughter. The poor man wept but kept silent. Nevertheless the rich man consummated the nuptials. Upon their return to the city the poor man wishes to bring his daughter before the court (that she may demand the death of the rich man). The rich man protests.

In Quintilian a man who had a son and a rich enemy was captured by pirates. He wrote to his son in regard to a ransom. The son had no money but when the rich man offered him his daughter in marriage he accepted her and thus obtained means to ransom his father. The latter on his return commands his son to put away his wife, and upon refusal disinherits him.

Seneca, ix, 4—Quintilian, 362.

Whosoever strikes his father let his hands be cut off.

A tyrant who held captive a father and his two sons commanded the young men to strike their father. One of them threw himself headlong to death, the other obeyed and was afterward

[334] Cf. Seneca, i, 5; iii, 5; vii, 8.

received into the tyrant's favor. The young man killed the tyrant, and received a reward. A demand is made that his hands be cut off. His father defends him.

In Quintilian the crime is much aggravated by the fact that there is no compulsion: two youths taking an oath each to strike the other's father; on the other hand there is no actual striking of one's own father. A demand is made that their hands be cut off; their fathers defend them.

Seneca, ix, 5—Calpurnius Flaccus, 34.

Let there be an action on a charge of force unlawfully applied.

A man, having a wife, lost two sons by a former wife with suspicious signs of cruel treatment and poisoning. The third son was abducted by his maternal grandfather who had not been admitted to see the others when ill. When the father sought to find his son by means of a public crier the grandfather acknowledged that the son was with him, and was charged with force unlawfully applied.

In Calpurnius Flaccus a repudiated wife, who had a son, after repeated attempts without success to obtain a reconciliation with her husband, uttered a threat that she would avenge herself. The husband gave the boy a step-mother, and the boy died with suspicious signs of cruel treatment and poisoning. The two women accuse each other.

The circumstances in the two declamations are much the same, but the judicial point at issue is in one case *vis*, in the other homicide.[335]

Seneca, x, 2—Quintilian, 258.

Let a valiant man choose what reward he will; if there be more than one claimant let the matter be settled by a judicial decision.

A father and son have both fought valiantly. The father asks the son to give up to him the reward of bravery. The son refuses; the matter is carried into court and the son wins. Thereupon he asks as a reward that statues be erected to his father who, however, disinherits him.

In Quintilian after the son has refused to give up the reward to his father the latter yields and disinherits him.

[335] Cf. also Seneca, vi, 6; Quintilian, 354; Calpurnius Flaccus, 39.

Synoptic table of the parallels of the subjects of the Controversiae of Seneca, the Declamations of the pseudo-Quintilian and Calpurnius Flaccus

1. Subjects identical.

Seneca.	Pseudo-Quintilian.	Calpurnius Flaccus.	
ii, 3	349		Cf. Quintilian, *Inst. Orat.* ix, 2, 90.
ii, 4		30	
iii, 5		33	
iii, 9	380		
iv, 4	369		
vi, 5	386		
vi, 6	354	39	Cf. Hermogenes, *περὶ τῶν στάσεων* (Spengel, *Rhet. Graec.* ii. 143.)
vii, 3	17		
vii, 8	309		
viii, 1		41	
ix, 6	381	12	

2. Subjects more or less cognate.

Seneca.	Pseudo-Quintilian.	Calpurnius Flaccus.
i, 4	330	
i, 5	270	49
i, 6	376	
i, 7	5	
ii, 2	357	
ii, 5	251	
ii, 7	325 and 363	
vi, 7	291	46
vii, 3	377	
vii, 4	6 and 16	
vii, 5	1 and 2	
viii, 3		47
viii, 6	257	
ix, 4	362	
ix, 5		34
x, 2	258	

IV.—The Legal Aspects of the Controversiae of Seneca.

Contr. i, 3.

Law: Let the incestuous priestess be hurled from a rock.

A priestess accused of incest before she was hurled from the rock invoked Vesta. She remained alive, and was demanded again for a repetition of the penalty.[336]

The Vestals vowed chastity for thirty years, and severe penalties were appointed for the violation of this vow, as it was believed to provoke the wrath of the gods upon the country. The pontifices—later the emperors—sat in judgment on the offending Vestals. In the earliest times they were scourged to death, but from the time of Tarquinius Priscus[337] they were buried alive, although according to Orosius[338] in 273 B. C. a Vestal was hanged. Those convicted were carried on a bier in silence through the streets and, after being scourged,[339] were immured alive with some food and a candle in a small subterranean vault in the Campus Sceleratus at the Colline gate[340]

The male accomplice was scourged to death in the market place.[346] According to Dio Cassius[342] he was after the scourging

[336] That this is a reference to a fictitious law of the schools was stated above, p. 63.

[337] Cf. Dion. Hal., *Antiq. Rom.* i, 78.

[338] iv, 5, 9. [339] Cf. Dion. Hal., *Antiq. Rom.* ix, 40.

[340] Cf. *ibid.* ii, 67; viii, 89; Livy, viii, 15, 7 sq.: "Eo anno Minucia Vestalis suspecta primo propter mundiorem iusto cultum, insimulata deinde apud pontifices ab indice servo cum decreto eorum iussa esset sacris abstinere familiamque in potestate habere, facto iudicio viva sub terram ad portam Collinam dextra viam stratam defossa Scelerato Campo; credo incesto id ei loco nomen factum"; *ibid.* xxii, 57, 2: "Quae Vestales eo anno Epimia atque Floronia, stupri conpertae, et altera sub terra, uti mos est, ad portam Collinam necata fuerat, altera sibimet ipsa mortem consciverat"; *ibid.* Epit. xiv: "Sextilia, virgo Vestalis, damnata incesti, viva defossa est" (but the passage contains nothing about the punishment of the male accomplice to which Rein refers). Servius ad Verg., *Aen.* xi, 206; Plutarch, *Num.* 10; Fab. Max. 18; Juvenal, *Sat.* iv, 8 sq. "Incestus, cum quo nuper vittata iacebat sanguine adhuc vivo terram subitura sacerdos"; Pliny, *Epist.* iv, 11; St. Augustine, *De Civitate Dei* iii, 5; Zonaeus, viii, p. 326, ed. Dind.

[341] Cf. Dion. Hal., *Antiq. Rom.* viii, 89; ix, 40; Livy, xxii, 57, 3: "L. Cantilius scriba pontificis, quos nunc minores pontifices adpellant, qui cum Floronia stuprum fecerat, a pontifice maximo eo usque virgis in comitio caesus erat, ut inter verbera exspiraret."

[342] lxxix, 9.

strangled in prison. But this was not the original punishment. The punishment of the criminals was followed by great expiatory sacrifices to avert diseases and other visitations of the gods.[343]

This penalty remained in force as long as the institution of the Vestals was in existence, even under the Christian emperors.[344]

Contr. i, 4.

Law: Let the man who surprises a man and woman in adultery be without blame if he kills both.

Law: Let it be lawful even for a son to punish adultery in his mother.

A valiant man who had lost both hands in war, caught his wife and her paramour *in flagrante* and ordered his son to kill them. The young man refused and the adulterer escaped, thereupon the son is disinherited.[345]

In the earliest times the husband who apprehended his wife *in flagrante* was allowed to kill her[346] and to avenge himself on the adulterer according to his pleasure. The same right was accorded to the wife's father. They were, however, obliged to kill both parties or neither.[347] The Lex Julia of Augustus allowed only the father to kill both or neither under certain conditions, while the husband could not kill his wife under any condition, and the adulterer only when he was *persona infamis, inhonesta*, or *vitior*.[348]

[343] Dion Hal., *Antiq. Rom.* viii, 89; ix, 40; Plutarch, *Quaest. Rom.* 83; Livy, xxii, 57, 4 sq.: "Hoc nefas cum inter tot, ut fit, clades in prodigium versum esset, decemviri libros adire iussi sunt, et O. Fabius Pictor Delphos ad oraculum missus est sciscitatum, quibus precibus suppliciisque deos possent placare, et quaenam futura finis tantis cladibus foret. Interim ex fatalibus libris sacrificia aliquot extraordinaria facta."

[344] Cf. Eusebuis, *Chron.* a. 2107.—Cf. on this subject Rein, *Criminalrecht*, pp. 876-8. Rein, *ibid.*, p. 877, foot note, quotes Dion. Hal., *Antiq. Rom.* ii, 69; Val. Max. viii, 1, 5; St. August., *De Civitate Dei* x, 16; Pliny, *Nat. Hist.* xxviii, 2, for the story that the Vestal Fuccia was acquitted of the charge through a miracle, and her accuser disappeared in an inexplicable way. For another such case Rein refers to Herod. i, 10.

[345] For the possible mythological source of and the parallels to this theme compare above, p. 64.

[346] Cf. Aul. Gell. x, 23; Seneca, *De ira* i, end.

[347] Cf. Quintilian, *Inst. Orat.* v, 10, 104; vii, 1, 6 sq.; *Decl.* 277. 279. 284. 291. 335. 347. 379; Calpurnius Flaccus, 46; Seneca, *Contr.* ix, 1.

[348] Cf. Paullus, ii, 26, 1 sq.; Rein, *Criminalr.*, pp. 835–44.

Contr. i, 5.

Law: A ravished woman may choose either the death of the ravisher or marriage without a dowry.

A man ravished two maidens in the same night: one demanded his death, the other marriage.[349]

In the Lex Julia *de vi* rape is considered as *vis*, and was at first punished with *aquae et ignis interdictio*, afterward with exile. Later capital punishment was inflicted, but this was unusual.[350]

Contr. iii, 2.

Parricida aequis sententiis absolutus.

A certain man accused his son of an attempt at parricide. When the judges were equally divided in opinion, the young man was acquitted. Whereupon his father disinherited him.

In ancient times a special commission (*quaestores*) was appointed, at first by the kings, in the republican epoch by the people, to judge cases of parricide.[351] The penalty was drowning in a sack.[352] The Lex Cornelia *de sicariis* mentions parricide. The Lex Pompeia treats especially *de parricidis*; it defines as parricide "Qui patrem, matrem, avum, aviam, fratrem, sororem, patronum, patronam occiderit."[353]

The punishment of the *culeus*[354] was retained for the murder of parents and grandparents; for the murder of other relations *aquae et ignis interdictio* was decreed. The Lex Pompeia threatened attempted parricide (*e. g.* the preparation of poison) in the same manner as if it were accomplished. The crime must be absolute and manifest. The Lex Pompeia remained in force under the emperors. For the culeus there was sometimes substituted burning, or throwing to wild beasts.[355]

[349] Cf. above, p. 64.

[350] Cf. Rein, *Criminalr.*, pp. 868 sq.

[351] Cf. Pomp., 2, § 32; D. de orig. iur. 1. 2.

[352] Cf. *Ad Heren.* i, 13; Livy, *Epit.* lxviii; Orosius, v, 16.

[353] Cf. Paullus, v, 25.

[354] Cf. Modestinus, l. q. pr. D. h. t.: "Poena parr. more maiorum haec instituti est, ut parricida virgis sanguineis (*i. e.* red) verberatus, deinde culeo (of leather, cf. Juvenal, xiii, 155) insuatur cum cane, gallo, gallina et vipera et simia, deinde in mare profundum culeus iactetur"; Cicero, *Rosc. Amer.* 25. 26, 69–72; Quint., *Decl.* 299; *Ad Heren.* i, 13; Cicero, *De invent.* ii, 50, 149.

[355] Cf. Rein, *Criminalr.*, pp. 449–63.

Contr. iii, 8.

Olynthius pater reus concursus.

Law: Let it be a capital offence to make a meeting and assembly.

After the conquest of Olynthus an aged Olynthian came to Athens with his youthful son. The Athenians decreed citizenship to all the Olynthians. Having been invited to dinner by a voluptuous young man the old man came with his son. When a suggestion was made of debauching the son, the father fled while the young man was forcibly retained. The father began to lament before the house; the house was burned; ten young men perished, among them the son of the Olynthian. The father is charged with holding an assembly.

For the import and the legal aspects of the *coetus*, compare Livy, ii, 28, 1: "Tum vero plebs incerta, quales habitura consules esset, coetus nocturnos, pars Esquiliis, pars in Aventino, facere, ne in foro subitis trepidaret consiliis, et omnia temere ac fortuito ageret"; 32, 1: "Timor inde patres incessit, ne si dimissus exercitus foret, rursus coetus occulti coniurationesque fierent"; cf. also xxx, 15; xxxix, 15. The Declamation against Catiline, which is ascribed to M. Porcius Latro, mentions the alleged ordinance of the Twelve Tables: "Ne quis in urbe coetus nocturnos agitaret," and the Lex Gabinia declares: "Qui conciones ullas clandestinas in urbe conflavisset, more maiorum capitali supplicio multaretur." Compare also Cicero, *Pro Sulla*, 5, 15: "Ille ambitus iudicium tollere ac disturbare primum conflato voluit gladiatorum ac fugitivorum tumultu, deinde id quod vidimus omnes, lapidatione atque concursu."—Rein, *Criminalr.*, pp. 473. 520 sq.

Contr. iv, 1.

Pater a sepulchris a luxurioso raptus.

While a certain man who had lost three children was sitting by their tomb, he was carried away forcibly by his wanton son to some near-by garden where, having been shaven and his clothing changed, he was compelled to take part in a banquet. When released he brings an action for *iniuria*.

The action of this controversia comes under the heading of *iniuria status libertatis*.[356]

[356] Cf. Rein, *Römisches Privatrecht*, p. 348.

Contr. iv, 4.

Armis sepulchri victor.

Law: Let there be an action at law for the violation of a tomb.

During a war in a certain state a valiant man, having lost his arms in battle, took other arms from the tomb of a hero. He fought bravely and replaced the arms. After receiving a reward he is charged with violation of a tomb.

For the legal aspects of this theme, compare *Amm. Marc.* xvi, 8; *Cass. Var.* iv, 18. Under the emperors *sepulchri violatio* was a *crimen extraordinarium* and was severely punished; despoiling corpses, if done *manu armata, capite*; if *sine armis, condemnatione ad metalla.*[357]

Contr. iv, 8.

Patronus operas remissas repetens.

Law: Let what is effected by violence and intimidation be invalid.

A patron defeated in a civil war and proscribed, threw himself on the protection of a freedman. He was received by him, and asked to give up all claim to his services. The patron gave up his claims with a signed renunciation. When he was restored to his position he demanded the services. The freedman protests.

In this theme may be a suggestion of the faithful Tyndarus in the *Captivi* of Plautus.

The *libertus* was obliged to assume the name of his former master (*patronus*) and if he died without issue the patronus became his heir. The patronus could also, like a father, claim obedience and respect from the libertus, and the latter was compelled to fulfil what he had promised at his manumission—*dona, munera, bona, operae*. He was even obliged to confirm these promises by oath after the manumission.[358]

Contr. v, 1.

Laqueus incisus.

Law: Let there be an action at law on a charge of malicious injury not in the code.

[357] Cf. Rein, *Criminalr.*, pp. 899 sq.

[358] Cf. Rein, *Römisches Privatr.*, pp. 285 sq. On the insolence of the freedmen and on the two kinds of manumission (one by the praetor which conferred all the rights of a Roman citizen, the other by the writing or declaration of the master, which conveyed a degree of liberty, but did not give the freed rank among the citizens), cf. Tacitus, *Ann.* xiii, 26, 27.

A certain man, having suffered shipwreck and having lost his wife and three children by the burning of his house, hanged himself. A certain one of the passers-by cut him down, and was brought to trial by the man he had saved on a charge of malicious injury.

Suicide was not considered by the Romans as a crime. On the contrary it is commended by Roman writers.[359] Nevertheless hanging one's self seems to have been at all times considered as an ignominious mode of death and to have entailed the loss of honorable burial.[360]

Contr. v, 4.

Damnatus parricidi alligans fratrem.

Law: Let the man who has given false testimony be bound under the control of him against whom he has testified.

A father went away with one of his two sons; the young man returned alone. He was accused of parricide by his brother and condemned. On account of an intervening festival the punishment, in accordance with the law, was postponed, and the father returned. The one convicted accused his brother of giving false witness and seized and confined him. His father commanded him to release his brother and upon his refusal disinherited him.

Falsum testimonium according to the Twelve Tables was punished by hurling from the Tarpeian rock.[361]

Contr. v, 5.

Domus cum arbore exusta.

Law: Let the man who has knowingly inflicted an injury pay fourfold, the man who did so without knowing, the simple amount.

A rich man asked his poor neighbor to sell him a tree which he said was in his way. The poor man refused. The rich man set fire to the plane-tree, with which the house also burned. For the tree he promises fourfold, for the house the simple value.

[359] Cf. Seneca, *De providentia* 2, 3; *Consol. ad Marc.* 22; Tacitus, *Ann.* vi, 29, 30; xii, 59; xiii, 30; *Hist.* ii, 49; Pliny, *Epist.* i, 12, 22; iii, 7, 16; Cicero, *De fin.* iii, 18.

[360] Cf. Rein, *Criminalr.*, pp. 883–6; Servius ad Verg., *Aen.* xii, 603; Orelli, *Inscr.* 4404.

[361] Cf. Rein, *Criminalr.*, pp. 767.788 sq.; Gellius, *Noct. Att.* xx, 1. Cases of action for this crime, Livy, iii, 24 sq., 29; iv, 21.

A law of the Twelve Tables provides that the illegal destruction of other people's fruit trees or vines shall be paid for at the rate of twenty-five asses for each tree.[362]

Contr. vi, 2.

Exul pater fundo prohibitus.

Laws: Let it be unlawful to aid an exile with shelter and food. Let the man condemned for accidental manslaughter be exiled for five years.

A certain man who had a son and a daughter, being condemned for accidental manslaughter and having gone into exile, was in the habit of coming to an estate near the boundary. His son discovering this punished the bailif. The bailif shut out the father who thereupon began to visit his daughter. She was accused of having harbored an exile but was acquitted by the advocacy of her brother. After the five years the father disinherits the son.

Exilium was the prohibition of residence in a certain country or city, with a command to live in a certain place. During the epoch of the kings and in the republican period it comprised voluntary banishment as well as the penal *aquae et ignis interdictio*. In the times of the emperors this latter passed over into the *deportatio*. Deportatio was for life, and entailed the loss of *civitas* and confiscation of property. Alongside of this severe form of banishment there was inflicted a milder degree, the *relegatio*, which was not followed by loss of civitas and confiscation. The five grades of banishment were: *in insulam deportatio; deportatio; in insulam relegatio; in perpetuum relegatio; in tempus relegatio*.[363]

Contr. vi, 3.

Mater nothi lecta pro patre.

Laws: Let the elder brother divide the patrimony, the younger take his choice. Let it be lawful to acknowledge a son by a bondwoman.

A certain man having a legitimate son, acknowledged another by a bondwoman and died. The elder brother made such a division that the whole patrimony was placed on one side and on the other the mother of the illegitimate son. The younger brother chose his mother, and accused his brother of defrauding him.

[362] Cf. Rein, *Criminalr.*, p. 333; Pliny, *Nat. Hist.* xviii, 1; Gaius, *Commentary* to the *Twelve Tables* iv, 11.

[363] Cf. Rein, *Criminalr.*, p. 915.

The "circumscriptio" of this case might come under *stellionatus*, which implied the taking of advantage in regard to property without necessarily coming under *dolum* or *furtum*.[364]

Contr. vi, 5.

Iphicrates reus.

Law: Let whosoever offers violence in a court of justice be liable to capital punishment.

Iphicrates having been sent against the King of the Thracians after being thrice defeated in battle concluded a treaty with him and married his daughter. When he had returned to Athens and was on his trial certain Thracians armed with knives appeared about the court, and the defendant himself drew his sword. When the judges were summoned to give their decision they publicly voted for an acquittal. Iphicrates is accused of offering violence in a court of justice.[365]

Appearance in the court or in the *contio* with arms for an evil purpose came under the Lex Julia,[366] under *vis publica* (in distinction from *vis privata*) which was punished by *aquae et ignis interdictio*.[367]

Contr. vi, 6.

Adultera venefica.

Law: Let there be an action at law for poisoning.

A certain man who had a wife and a marriageable daughter by her informed his wife to whom he was intending to betroth the daughter. The wife said: "She shall die sooner than marry that man." The girl died before the marriage day with suspicious signs of cruelty and poison. The father put a maid-servant to the torture. She said she knew nothing about poison but she did know of the adultery of her mistress with him to whom the father intended to betroth his daughter. The man charges his wife with poisoning and adultery.

The earliest punishment for murder by poisoning as related by Livy,[368] took place 332 B. C. The most prominent men died

[364] Cf. Rein, *Criminalr.*, pp. 331 sq. Rein says that the Roman definition of stellionatus was quite indefinite.

[365] For the historical basis of this Controversia see above, p. 66 sq.

[366] Mentioned in Cicero, *Phil.* i, 9 sq.

[367] Cf. Rein, *Criminalr.*, pp. 745. 750.

[368] viii, 18, 2 sqq., where it is, however given as a tradition.

mysteriously[369] until a maid-servant revealed to the aedile Q. Fabius Maximus the fact that women of high position were preparing and distributing poison. With the consent of the senate the matter was followed up, and a number of women were found engaged in the preparation of poison. When they were compelled to drink their own preparations twenty of them died, and in the pursuance of the investigation about one hundred and seventy were condemned. (The manner of punishment is not recorded.) The affair was also considered as a *prodigium* requiring expiation, and a dictator was chosen *clavi figendi causa*.[370]

In 184 B. C. the praetor Q. Naevius sat in judgment on murders by poison which often occurred in the country towns about Rome, and according to Valerius Antias two thousand people were found guilty.[371] Two years later on the sudden death of C. Calpurnius Piso and other prominent men a suspicion of poisoning arose, and by a senatus consultum the praetor C. Claudius was given charge of the *quaestio* concerning murders by poison in the city and vicinity, and the praetor C. Maenius the *quaestio* outside. Of those condemned in the city only Quarta Hostilia, the wife of the murdered consul, is mentioned. Her guilt was proved by numerous witnesses.[372] C. Maenius found so much to do outside the city that he wrote to the senate that he had already condemned three thousand persons and that the number of the suspects was constantly growing in consequence of new informations. In the following year the praetor urbanus P. Mucius Scaevola held an investigation of cases of murder by poison in the city and vicinity.[373] Investigations were again held at the time of the third Punic war, and two prominent matrons, Publia the wife of Postumius Albinus, and Licinia the wife of Claudius Asellus, were accused of having poisoned their husbands, and put to death by the sentence of a family court (*iudicium domesticum*).[374]

The last accusation for poisoning recorded prior to the Lex Cornelia is that of Q. Varius Hybrida, known through the Lex Varia. He was executed "summo cruciatu supplicioque."[375]

[369] "Cum primores civitatis similibus morbis eodemque ferme omnes eventu morerentur."

[370] Cf. Valer. Max., ii, 5, 3; Orosius, iii, 10.

[371] Cf. Livy, xxxix, 41. [372] Cf. *ibid.* xl, 37. [373] Cf. *ibid.* xl, 43 sq.

[374] "Cognatorum decreto nectae sunt." Cf. Livy, *Epit.* xlviii; Valer. Max., vi, 3, 8.

[375] Cf. Cicero, *De nat. deor.* iii, 33, 81.

During the civil war between Marius and Sulla with other evils and crimes, poisoning also increased.[376] Sulla endeavored to check these evils by his Lex (hence called Cornelia) de sicariis et veneficis.[377] The fifth division treats of murder by poisoning, and declares that the praetor or iudex quaestionis shall judge "quicumque fecerit, vendiderit, emerit, dederit (sc. venenum)."[378] The penalty, as also for other kinds of murder and arson, was *aquae et ignis interdictio* for freemen and death for slaves.[379]

In the imperial period the punishment for murder was more severe: *deportatio in insulam* for *altiores*, execution for *honestiores*, while *humiliores* were thrown to the wild beasts or put on the cross. A senatus consultum extended the compass of "venenum," and punished all those who used a *medicamentum* through which the life or health of the person taking it was endangered (*i. e.* medicines to bring about conception or abortion).

Under Augustus three accusations of murder by poison are recorded: against Moschus a rhetor of Pergamus, who was defended by Asinius Pollio and C. Manlius;[380] against Apollodorus, also a rhetor of Pergamus, who was defended by the same Asinius Pollio. Apollodorus was condemned, and went into exile at Massilia;[381] against Nonius Asprenas, a friend of Augustus, who was accused by Cassius Severus of poisoning one hundred and thirty guests. He was likewise defended by Asinius Pollio.[382]

Under Tiberius occurred the poisoning of Germanicus in 19 A. D. by Cn. Piso and his wife Plancina perhaps not without the connivance of the emperor who was jealous of Germanicus. Before his death Germanicus demanded that his friends should become the accusers of Piso. The senate conducted the investigation and Cn. Piso, despairing of the result, committed suicide. Plancina was at first pardoned at the intercession of the Empress Agrippina, but after the death of the latter in 33 A. D. she was

[376] Cf. Cicero, *Pro Cluentio* 54.

[377] Commonly abbreviated: Lex Cornelia de Sicariis.

[378] Cf. Cicero, *Pro Cluent.* 54.

[379] Cf. *ibid.* 71.

[380] Cf. Horace, *Epist.* i 5, 9, and Porphyrion ad loc.

[381] Cf. Seneca, *Contr.* ii, 5, 13.

[382] Cf. Pliny, *Hist. Nat.* xxxv, 12; Suetonius, *Octav.* 56; Quintilian, *Inst. Orat.* x, 1, 22; xi, 1, 57.

again accused and likewise committed suicide.[383] The poisoning of Drusus the son of Tiberius took place at the instigation of Sejanus by the eunuch Lygdus, with the knowledge of Drusus's wife Livia or Livilla. The affair remained for a time doubtful and obscure until Apicata, the wife of Sejanus, after the execution of her husband, betrayed all in a letter to Tiberius. An action followed: Eudemus and Lygdus when tortured confessed everything, and all the participants in the crime were executed in 31 A D.[384]

The Emperor Claudius, who committed many murders, was at last himself poisoned by his wife Agrippina. The poison was prepared by the notorious Locusta, and the physician Xenophon completed the deed.[385] Agrippina also caused the poisoning of Junius Silanus, proconsul in Asia, by P. Celer and Hetius; another of her victims was Narcissus the freedman of Claudius.[386] Locusta also assisted in the poisoning of Brittanicus by Nero in 55 B. C. She had been condemned long before, but on account of her great skill was kept in custody and forced to be the tool of prominent persons.[387] Nero also caused the freedmen Doryphorus and Pallas to be poisoned.[388]

It may be noted that under Domitian poisoning was very frequent, especially by means of poisoned needles.[389]

Contr. vi, 7.

Demens qui filio cessit uxorem.

Law: Let there be an action at law for madness.

A man having two sons married a second wife. When one of

[383] Cf. Tacitus, *Ann.* ii, 69–82; iii, 10–18; vi, 26; Dio Cassius, lvii, 18; Suetonius, *Tiber.* 52; *Vitell.* 2; *Calig.* 1.2; Pliny, *Hist. Nat.* xi, 37; Zonaeus, xi, 2. In Tacitus *Ann.* iii, 22 sq. it is related that Emilia Lepida, who was charged with feigning that she had given birth to a child by Publius Quirinus her husband, and was further charged with adulteries, poisonings, and treasonable dealings with the Chaldeans about the fate and continuance of the imperial house, was interdicted from fire and water; *ibid.* iv, 22 it is stated that Numantina was accused of having, by charms and potions, disordered the brain of her husband.

[384] Cf. Tacitus, *Ann.* iv, 8–11; Dio Cassius lvii, 22; lviii, 11.

[385] Cf. Tacitus, *Ann.* xii, 66 sq; Dio Cassius, lx, 34; Suetonius, *Claud.* 44 sq.

[386] Cf. Tacitus, *Ann.* xiii, 1; Dio Cassius, lxi, 6.

[387] Cf. Tacitus, *Ann.* xiii, 15 sq.; Dio Cassius, lxi, 7; Suetonius, *Nero* 33

[388] Cf. Tacitus, *Ann.* xiv, 65.

[389] Cf. Dio Cassius, lxvii, 11. On this whole subject compare Rein, *Criminalr.*, pp. 406–8. 410. 414. 419. 426 sq.

the young men was ill nigh unto death the physicians said that the cause of his illness was a mental trouble. When the father compelled the son at the sword's point to tell him the truth the young man confessed that he loved his step-mother. The father gave up his wife to him, and thereupon was charged with insanity by his other son.[390]

The Twelve Tables place a mature person of unsound mind under the care of his kinsmen (*agnati*) or where he has none under that of his gens (*gentiles*).[391]

Contr. vii, 7.

Law: Let there be an action at law for treason.

A father and son desired military command; the son was preferred over the father, and having engaged in battle with the enemy was captured. An embassy of ten was sent to ransom the commander. While they were on their way the father met them with gold, and informed them that his son had been crucified, and that he himself had carried the gold for his ransom too late. When they reached the crucified commander he said to them: "Beware of treason." The father is accused of treason.

Proditio consists in 1. Treacherous or cowardly surrender of territory or people to the enemy. 2. Desertion. 3. Going over to the enemy. 4. Inciting a foreign enemy to war against Rome. 5. Probably any support of the enemy (with arms, money, release of hostages, etc.). The punishment was death, including hanging on the *arbor infelix*, hurling from the Tarpeian rock[392] and exetion with the axe.[393] In the time of the emperors the *damnatio memoriae*,[394] consisting of tearing down the house of the con-

[390] For the historical suggestion in this theme, and the parallels to it, see above, p. 67.

[391] Cf. Rein, *Privatr.*, pp. 259 sq.; *Ad Heren.* i, 13; Cicero, *Tusc. Disp.* iii, 5; *De inv.* ii, 50: "Si furiosus est agnatorum gentiliumque in eo pecuniaque eius potestas esto;" Varro, *De re rust.* i, 2: "Mente est captus atque ad agnatos et gentiles est deducendum." Rein remarks that no great stress is to be laid on the various expressions, as they have no legal importance, as every person of unsound mind, whether *furiosus* or *demens*, was placed under *curatio*.

[392] Cf. Livy, vii, 20, 12; Dion. Hal., *Rom. Antiq.* viii, 78; Seneca, *De ira* i, 16.

[393] Cf. Livy, ii, 5, 8; 41, 9; viii, 20, 8; x, 1; Dion Hal., *Rom. Antiq.* v, 8.

[394] Cf. Quintilian, *Inst. Orat.* iii, 7, 20: "post mortem adiecta quibusdam ignominia est."

victed,[395] was a not uncommon occurrence. Sometimes also command was given that no member of the family should bear the name of the criminal,[396] nor were his relations allowed to mourn for him. His property also was confiscated.[397] The Lex Julia *de maiestate*, issued by Caesar, prescribed the same penalty of *aquae et ignis interdictio* for all kinds of treason.[398]

Contr. viii, 1.

Orbata post laqueum sacrilega.

Law: Let a magistrate inflict punishment on one who has confessed guilt.

A woman having lost her husband and two sons hanged herself, but a third son cut her down. She, when a sacrilege had been committed, and the perpetrator was being sought for, told the magistrate that she was the guilty party. The magistrate wishes to inflict punishment on her on the ground of her confession. The son protests.

Sacrilegium was a term at first applied to the despoiling of a temple, the theft of sacred objects. In the imperial period the term was given a wider scope, embracing any outrage on religion, any wicked deed which implied a violation of the sacred and moral order, especially lack of respect toward the emperor, heresy, disturbance of worship, etc. Even in the earlier period, however, sacrilegium in the wider sense was prohibited and regarded as an act deserving the severest punishment. Of great importance in regard to this crime was the Lex Julia *peculatus* (*i. e.* the unlawful appropriation of public property). It read: "Ne quis ex pecunia sacra religiosa publicave auferat, neve intercipiat neve in rem suam vestat." Compare also the definition of

[395] Cf. *ibid.*: "ut Maelio, cuius domus solo aequata"; Livy, viii, 20, 8; Cicero, *Pro domo* 38.

[396] Cf. Quintilian, *l. c.*: "Marcoque Manlio, cuius praenomen a familia in posteriorem exemptum est"; Tacitus, *Ann.* ii, 32.

[397] Cf. Rein, *Criminalr.*, pp. 475–7.

[398] Cf. *ibid.*, pp. 518 sq. A specialization of the law on treason under the emperors is illustrated by the actions at law described in Tacitus, *Ann.* i, 72–4. For action for treason under Tiberius, cf. Tacitus, *Ann.* iii, 70 (Lucius Ennius, for converting a silver effigy of the prince to the ordinary purposes to which silver is applied); iv, 18 sq. (Caius Silius.—A case where a son accused his father, both named Vibius Serenus, of plotting against Tiberius is found *ibid.* 28 sq.)

Seneca in *De beneficiis* vii, 7: "Quisquis id, quod deorum est, sustulit et consumpsit atque in usum suum vertit, sacrilegus est." The law also prohibited the violation of the walls which belonged to the res sanctae;[399] also to scale and cross over the city wall by means of a ladder, which was considered a hostile action and unworthy of a Roman citizen. On the other hand the plundering of temples in an enemy's land was considered lawful.[400] The penalty in the Lex Julia for sacrilege was *aquae et ignis interdictio* which however was soon replaced by *deportatio*. Under imperial rule there was introduced a variety of punishments. The *damnatio ad bestias* and less often burning alive were inflicted on those "qui manu facta templum effregerunt et dona dei noctu tulerunt." "Si quis interdiu modicum aliquid de templo tulit," the guilty one was condemned *ad metalla*, and when *honestiore loco natus* to *deportatio*, although in this case also the death penalty might be inflicted.[401]

Contr. ix, 2.

Law: Let there be an action at law for injuring the dignity of the state.

The proconsul Flaminius being requested at dinner by a courtesan who said that she had never seen a man decapitated, put to death one of those condemned. He is accused of injuring the dignity of the state.[402]

In the Lex Cornelia *de maiestate* (*i. e.* actions for crimes which tended to affect and diminish the majesty and dignity of the state) was included the conduct of a magistrate when unmindful of his dignity he compromised the Roman majesty.[403] The penalty was as for *perduellio*, *aquae et ignis interdictio*.[404]

[399] Cf. Cicero, *De nat. deor.* iii, 40, 94: "Est enim mihi tecum pro aris et focis certamen, et pro deorum templis atque delubris proque Urbis muris, quos vos, pontifices, sanctos esse dicitis. . . ." Plutarch, *Quaest. Rom.* c. 27: "πᾶν τεῖχος ἀβέβηλον καὶ ἱερὸν νομίζουσι"; Dion. Hal., *Antiq. Rom.* i, 88; Isidorus, xv, 4.

[400] Cf. Seneca, *Epist.* 87.

[401] Cf. Rein, *Criminalr.*, pp. 691–4.

[402] For the historical basis of this Controversia see above, p. 68.

[403] Cf. Seneca, *Contr.* ix, 2, 14: "in eo autem, quod sub praetexto publicae maiestatis agitur, quidquid peccatur, maiestatis actione vindicandum est;" *ibid.* 15: "Is laedit populi Romani maiestatem, qui aliquid publico nomine facit. . . ."

[404] Cf. Rein, *Criminalr.*, pp. 512. 525. 527; Tacitus, *Ann.* iii, 38, 50 end: "bonis amissis aqua at igni arceatur, quod perinde censeo ac si lege maiestatis teneretur."

Contr. ix, 3.

Laws: Let acts effected by violence and intimidation be invalid. —Let agreements according to law be valid.—Let him who has recognized a child who has been exposed take it back after paying for its nurture.

A man took up two sons who had been exposed, and educated them. When their natural father sought for them he promised that he would show where they were if he would give him one of them. The agreement is made whereupon he restores the two sons asking for one.

By the Roman law the father originally had the right to kill or expose the newborn child. This right arose from the custom, common in antiquity, of destroying deformed infants. But this right was accorded not without certain limitations. According to the decision ascribed to Romulus,[405] the father was obliged before exposing the child to show it to five neighbors who were to examine whether the child was deformed or to be exposed on account of its sickliness. Dionysius Halicarnassus adds that the father was obliged to bring up male children and the first-born daughter. This latter statement of Dion. Hal. does not fully accord with the first, according to which all children before being exposed had to be shown to neighbors. The Twelve Tables also command that sickly and deformed children be exposed. The exposure and killing of the deformed ("foedum ac turpe prodigium") was even regarded as a sacred duty, lest the state might suffer some calamity.[406] But fathers acted quite arbitrarily on this matter, and exposed their offspring for other reasons than deformity and weakness, as for instance on account of poverty, suspicion that they were children of another man, etc., without being interfered with by the state. An instance of exposure in the comedians is Terence, *Hecy.* iii, 3, 40. Dio Cassius, xlv, 1, relates that Octaviamus was intended for exposure by his father because it had been announced to him that the child would become the ruler of Rome, and Suetonius, *Octav.* 65, relates that the child of Julia, grandchild of Augustus, was exposed by command of the emperor because born in adultery. The frequent occurrence of exposure in the provinces is attested by Pliny, *Epist.* x, 71 sq.[407]

[405] By Dion. Hal., *Antiq. Rom.* ii, 15.

[406] Cf. Livy, xxvii, 37; Seneca, *De ira* i, 15: "portentosos foetus extinguimus, liberos quoque si debiles monstrosve editi sunt mergimus."

[407] Cf. Seneca, *Contr.* x, 4, 15 sq.

In the imperial period the custom grew so that the state felt constrained to declare it a crime. The penalties were made more and more severe until it became a capital offence.[408]

As regards *gesta per vim metumque*, L. Octavius, an older contemporary of Cicero, proclaimed an edict called after him *formula Octaviana*: "quod vi metusve causa gestum erit, ratum non habeto."[409]

Contr. ix, 4.

Law: Let the hands be cut off of the man who has struck his father.

A tyrant summoned to his citadel a father with his two sons, and commanded the young men to strike their father. One of them threw himself headlong, the other carried out the command of the tyrant and being received into his friendship killed him and received a reward. His hands are demanded and his father defends him.

Iniuriae done to parents were regarded as *atroces*[410] and were in the imperial epoch referred for punishment to the praefectus urbis, in the provinces to the governor: "si filius matrem aut patrum (*i. e. parentes* in infinitum, grandparents, etc.), quos venerari oportet, contumeliis (this *iniuria* is more specifically detailed as *convicium* and *pulsare*) afficit, vel impias manus eis infert; praefectus urbis delictum ad publicam pietatem pro modo eius vindicabit."[411]

Contr. x, 1.

Let there be an action at law for injury.

A man who had a son and a rich enemy was found slain but despoiled of nothing which he had. The young man persisted in following the rich man in shabby garments. The rich man brought him to a court of justice and demanded that he should accuse him if he had any suspicions. The poor man said: "I will accuse you when I can." When the rich man became a candidate for public office and was rejected he accused the poor man of injury.

[408] Cf. Rein, *Criminalr.*, pp. 441–4.

[409] Cf. Rein, *Privatr.*, pp. 503 sq.; Cicero, *In Verr.* i, 50; iii, 65; *Ad Quint.* fratr. i, 1, 21; Seneca, *Contr.* ix, 3.

[410] Cf. Ulpiun. vii., § 8.

[411] Cf. Rein, *Criminalr.*, p. 382.

The definitions of *iniuria* in the successive edicts of the praetors, reaching down to the imperial period, contained the decision that an iniuria was committed: "si ad invidiam alicuius veste lugubri utatur aut squalida aut si barbam demittat, etc.,"[412] since mourning garb was worn to indicate that a criminal action was pending over some one.[413]

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[412] Cf. *Digest.* (*Pandectae*) L. 15 § 27, de iniuria.

[413] Cf. Rein, *Criminalr.*, p. 365.

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VITA.

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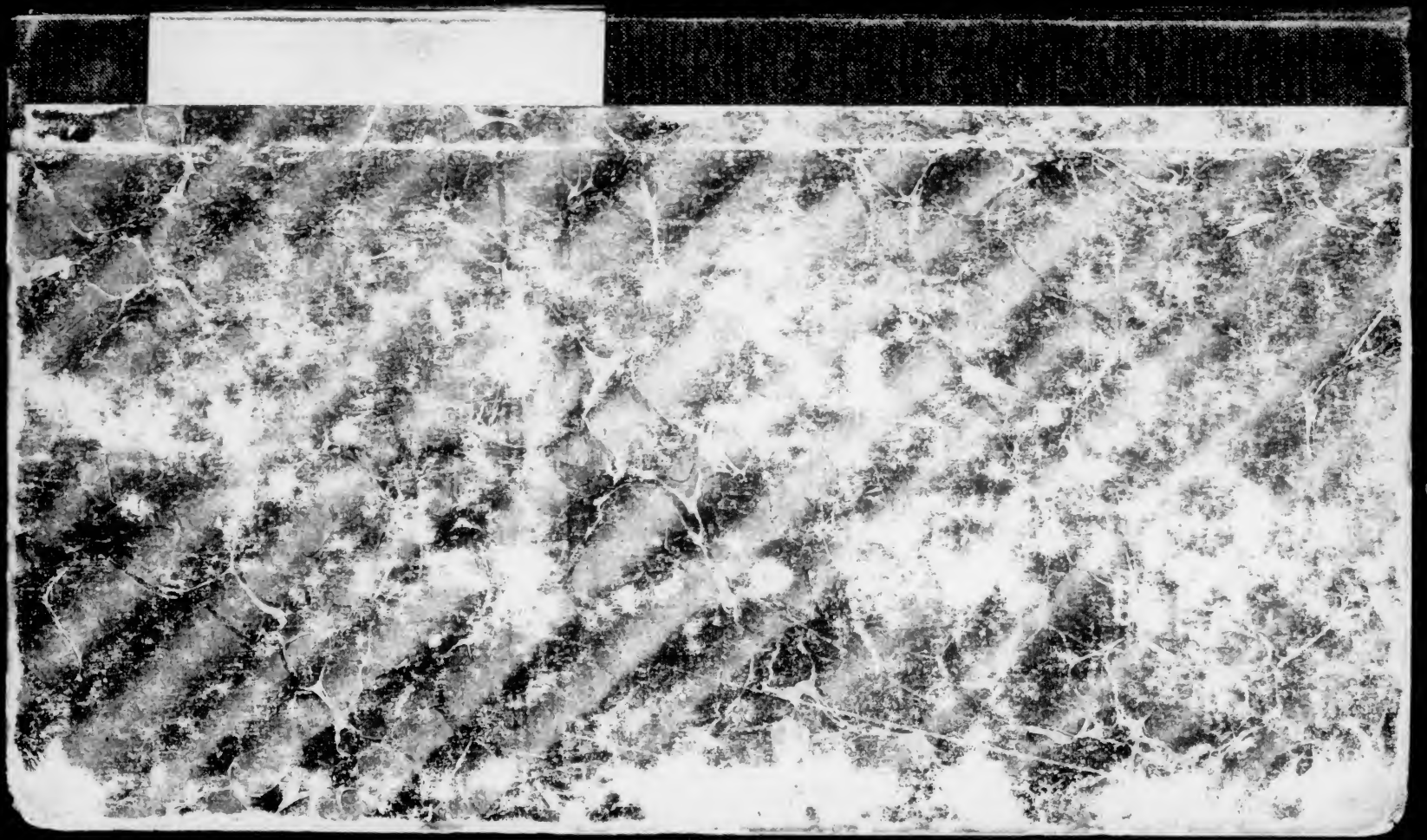
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